NOVI SAD EUROPEAN CAPITAL OF CULTURE

Novi Sad - Potsdam - Szeged

Novi Sad – European Capital of Culture 2022

International Scientific Conference

Peace and Law – European Peace Agreements in the Broader Social Context

Book of Abstracts

Novi Sad, Serbia

2022

European Peace Agreements in the Broader Social Context

University of Novi Sad
Faculty of Law

University of Potsdam
Faculty of Law

University of Szeged
Faculty of Law and
Political Sciences

Novi Sad – European Capital of Culture 2022

Peace and Law – European Peace Agreements in the Broader Social Context

International Scientific Conference

Novi Sad, 24 – 25th June 2022

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NOVI SAD
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INTRODUCTION

Prof. Dr. iur. Dr. h. c. Detlev W. Belling, M.C.L. (U. of Ill.)
University of Potsdam, Federal Republic of Germany

From 24 to 25 June 2022, the conference "Peace and Law - European Peace Agreements in the Broader Social Context" will be held as part of the program "European Capital of Culture 2022 - Novi Sad". Renowned scholars from the Universities of Novi Sad, Szeged and Potsdam will be giving lectures, the abstracts of which are reproduced in this volume.

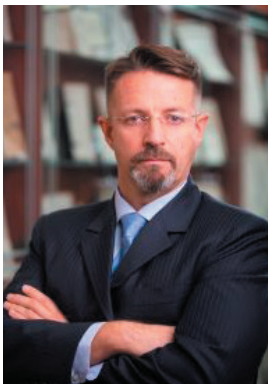
The Conference will promote mutual understanding and further intercultural communication, thus contributing to both of these objectives. Selected topics involving Serbian, Hungarian and German law will be highlighted. We encourage openness and frankness. A dialogue will develop which will be instructive and profitable for everyone involved. The exchange of ideas and academic controversy will lead to new insights which will benefit our countries.

The "struggle for the law" *(Rudolf von Jhering)* unites us. By struggling for the rule of law, we contribute to peace. After all: "Peace and Law are intertwined. Peace affects the law. Because peace allows law to thrive. But if peace is broken by violence, the law will be violated. Conversely: The law influences peace. Because good law promotes peace, but bad law (statutory lawlessness, *Gustav Radbruch*) damages it." (Florian J. Schweigert). It is to be hoped that the participating scholars will fill the dialogue with life in the future.

This conference would not be possible without the meticulous preparations by Ms. Midorović, Ms. Kovačević, Mr. Milutin, Mr. Jovanov und Mr. Harkai, which we appreciate greatly.

WELCOME ADDRESS

Prof. Dr. Branislav Ristivojević
Dean of the University of Novi Sad Faculty of Law



Your Honourable Excellency,
our esteemed guests,
respected professors and dear colleagues!

It is my special honour, privilege and pleasant duty to greet all of you and wish a pleasant stay here at Novi Sad. Today we are proud to be able to host our joined conference today, here at the University of Novi Sad. I bid a very warm welcome to all the renowned speakers and delegates who took out their valuable time and joined us today to be a part of this conference. We are honoured to have you all with us. We appreciate your presence at this difficult time.

The project "European Capital of Culture", within which we are organizing our conference, was established to emphasize richness and diversity of European cultures, strengthen bonds between citizens of Europe, connect people from different European countries, learn about other cultures, promote mutual understanding and raise awareness of common history and values.

Surrounded by these noble goals, Novi Sad, as one among 40 such a capitals, tried to emphasize the importance of peace as a crucial substance of European moral standards and shared ethics. This idea came naturally as a product of the awareness that here in Novi Sad we have a fortress, built and raised to serve as a valuable instrument in armed conflicts, which for almost 300 hundred years of its existence saw many wars, but, despite its purpose, not a single combat. It is no wonder that it became a long-lasting symbol of a peace, which, moreover, found its way on a coat of arms of Novi Sad, established in 1748. Is it a coincidence that forefathers of this humble city, while designing their emblem in the middle of XVIII century, combined Petrovaradin fortress with a Noah dove with olive branch plucked off?

Clearly it was not. After years of a different warfare, having in mind its own bloody and miserable past, hardened with bitter experiences of destructions, citizens of Novi Sad wanted to eventual-

ly and for eternity mark their relentless and persistent intention to strive for peace. The city crest was a pledge for better future.

Were they aims attained, and goals, represented at the insignia, achieved? Was it always as they wanted to be? Was Novi Sad spared of a war and accompanying destruction and atrocities? I would like to be able to share with you only the supporting testimony in that regard, but the answer is unfortunately - no.

The very fact that coat of arms is still crowned with a noble bird, that is often associated with the Spirit of God, and that we are proud to offer, our dear guest, a notion of peace as the main theme of our scientific conference, undoubtedly speaks that these sorrowful and sad experiences didn't break our spirit, and our determination to make every possible effort to find peaceful solution to challenges that lie, now as well as in future, ahead of us.

Our noble and esteemed guests, I am delighted and gratified to observe that your willingness to share experiences and expert knowledge with us signified that we had gone through similar cycles of harmful and painful ordeal, vengeful thoughts and, after all that, we were able to overcome anger and forge tolerant attitudes that award only virtuous, those who truly share the very same christen like ethics of forgiveness. And forgiveness will be a very sought after commodity in these unhappy and grieving times of war between our not so distant neighbors, political ally, trade partners and fellow christens. The exceptionally brilliant, good and prosperous relations between Germany, Hungary and Serbia, probably unnoticed in long history of our contacts, set an outstanding example to anyone whom the idea of achieving reconciliation through forgiveness, building new bridges through cooperation and making various exchange in mutual benefit, is tempting.

Our dear guests, we have jointly choose to describe and illuminate the relationship between notion of peace and notion of law as a subject of our conference not a year before eruption of the present war. Were we able to foresee through some unnatural gifts the ongoing conflict in our vicinity? Are we a prophets? Obviously no. The ability to choose object of a scientific observation wisely and on time serve as a credit to our scientific expertise, ingenuity and skills. Not so many among our colleagues could praise themselves with such an accomplishment. Honorable ladies and gentlemen, please do not begrudge me for a humble assessment that our conference is already successful.

I would like to beg for another forgiveness from you, and please except my apologies for yet another humble and modest as-

sessment: values and scopes of our conclusions are going to be limited for a while. It is beyond dispute that occasions like our conference should be filled with joy and enthusiasm from the beginning to the very end. Sadly, certain amount of time will be necessary before approval and compliment reach us. Not in vain and not without reason ancient roman Orator minted one, among other bright and astute, proverb: "Inter arma silent leges". How right and true was this sentence then and now. Rare will be those who are going to seek counsel from law in time of war. Arms are too loud in order to hear arguments of the blind Goddess.

It is my strong believe that this fact is not going to shake us and undermine our determinations to share scientific knowledge, common sense and useful experience which we will record and preserve for years to come. In this way we could leave a trace from which some future generations can benefit and, maybe, prosper. This is said in firm judgment that whoever would win this war, he would achieve only the minor goal among those which are ahead of him. Wining the peace will be much harder, for sure.

So, our esteemed colleagues and fellow voyagers, on the journey of the greatest among all in time of war, and this is the quest for true meaning of peace, let's not be distracted with facts we could not change and occurrences that we could not prevent. I hope that all of you will enjoy our conference and your stay in Novi Sad and that it will be rewarding and beneficial to us all. We will do our best as a host to make that happen and to present Novi Sad in its true spirit of peace.

Let me end this speech with a quotation borrowed from a famous wartime movie "Casablanca", regardless of a fact that it is a bit informal for our event.

"Louis, I think this is the beginning of a beautiful friendship."

WELCOME SPEECHES

Prof. Dr. Florian J. Schweigert
Vice President for International Affairs
and Fundraising at the University of Potsdam

Your Magnificence, Rector Madić,
ladies and gentlemen,
dear students,

It is an honor for me to take part in the opening of the "Peace and Law" conference and a delight to welcome you.

The subject matter of this conference was chosen well. It is topical. We are currently struggling for peace in Europe. The conference is attracting international attention. Renowned Serbian, Hungarian, and German scholars have gathered here to discuss whether and how peace and law interact. Other interesting legal topics will also be addressed.

Peace and Law are intertwined. Peace affects the law. Because peace allows law to thrive. But if peace is broken by violence, the law will be violated. Conversely: The law influences peace. Because good law promotes peace, but bad law (statutory lawlessness, Gustav Radbruch) damages it.

The conference fits in well with this year's program of the 2022 European Capital of Culture Novi Sad. The motto of the Capital of Culture year is "For New Bridges"; bridges that connect peoples. Especially now, in difficult political times, it is important to carry on the dialog via cultural and scientific bridges. Our conference solidifies bridges between Serbia – Hungary – Germany. It is good that there is a German-language section. We are keen for the German language and legal culture to become more widely known again in this country. The knowledge of the German language and legal culture should not be considered as an opportunity to leave, but a reason to stay in Serbia and strengthen the ties with Germany.

The title "European Capital of Culture" is a meaningful distinction for which I offer my congratulations. The title is a sign of the European Union's close ties to Serbia. The European Union

has been awarding the title annually since 1985. The aim is to highlight the richness, diversity, and commonalities of Europe's cultural heritage and to build bridges between the countries of Europe. A European Capital of Culture is committed to the values and objectives upon which the European Union is founded: respect for human dignity, freedom, democracy, equality, the rule of law, safeguarding human rights, including the rights of individuals who are part of minorities. Novi Sad deserves this distinction.

The values of the European Union can be felt in the history and evolution of the city - although the vulnerability of these values also becomes apparent. It is important to remember the past when thinking about peace and law. The first half of the last century illustrates that fundamental values can come under threat and that abysmal depths can be revealed. The current acts of war are a wake-up call for us.

Novi Sad has had a European character for a long time. The names Neoplanta – Novi Sad – Újvidék – Neusatz reflect the fact that the city has been polycultural since its founding. Today's fundamental European values were already practiced here in the past. Let us strive to live together in peace and freedom as we once did, to work together, to complement each other, to respect each other.

Science is a good field for this. Science only thrives if there is freedom and independence. As part of the international academic and scientific community, we stand for peaceful cooperation with respect and accountability. It is with this awareness that we connect with the University of Novi Sad and the University of Szeged. It is in this spirit that our Serbian – Hungarian – German conference takes place. May it provide impulses for the future – beyond the universities.

Let me say a few words about the University of Potsdam:

It is a young university: The official "birthday" of the university is July 15, 1991. In 2021, 30 years later, we had more than 22,000 students. The Law Faculty was there from the very beginning. Professor Belling has known it since its inception. With its more than 2,500 students and about 300 graduates annually, the Law Faculty plays an important role nationwide and in the state of Brandenburg. Special expertise in the fields of international law and human rights, as well as media law, makes the faculty an ideal location for the education of lawyers for European institutions and international organizations, as well as the private sector. The joint German Law School Szeged (https://www.uni-potsdam.de/

de/drszeged/), led on the Hungarian side by Professor Badó and on the German side by Professor Assmann, aims to impart knowledge of German law, understanding of the way German lawyers think and argue, and proficiency in the German technical language. We have had legal scholars from Novi Sad and Szeged come to Potsdam. I hope that they will visit the Law Faculty and the Language Center in Potsdam again.

Science needs cooperation and exchange:

Our universities laid the foundation for our cooperation with the Memorandum of Understanding of July 4, 2017. Exchanges are taking place between us now. Our conference aims to enrich jurisprudence. The conference also serves as a meeting place – not only for legal experts. We want to get to know and appreciate one another.

When we get home, we want to be able to say: *"The university town of Novi Sad was a nice place to be. It's a good thing I was there. I have learned. It was worth it."* We are expecting you at our university in Potsdam. We will gladly welcome you there.

I wish us all a successful event.

Prof. Dr. Márta Görög
Dean of the Faculty of Law
and Political Sciences of the University of Szeged

Rector Madić,
Honorable Deans,
Ladies and Gentlemen,
Distinguished Colleagues,

As Dean of the Faculty of Law of the University of Szeged, it is my great pleasure and honour to welcome you all as participants to this conference.

This conference today is truly emblematic in more than one respect. It symbolises the cooperation between the three institutions of higher education, the shared intention and will to develop training, to generate new knowledge, to promote internationalisation, and the significance of the values we all embrace and convey. All of this is amply encapsulated in the title of the conference: No matter how divergent our cultures, how different our customs, how dissimilar our languages as vectors of identity, the key message is that, despite all these differences, we all speak the same language, the language of peace and law.

The desire to pull together, the need to think together and the desire for peace are once again being expressed here in Europe in a unifying phrase. We can only hope that the end of this phrase will soon be reached once and for all, and that the harmony of law and peace will be restored.

The focal point of imparting knowledge of the cooperation celebrated at today's conference takes us back 25 years. Since 1997, our Faculty has cultivated close connections with the University of Potsdam in the field of German legal training. Not only has this long-standing relationship been structured organically, but it has also been organised around a well-defined objective and has developed to the level it has today. The partnership initially offered a course in "German and European Business Law", which was complemented in 2012 by a course in "German Legal Translation", and in 2016 by evolving into a Master's programme. Thanks to

this cooperation, our students can now obtain a joint LL.M. degree from the University of Potsdam and the University of Szeged. Therefore, we can look back on successful years and a fruitful partnership, of which the University of Novi Sad is now a part, as a result of a Memorandum of Understanding concluded in 2017. It gives us great pleasure to have this tripartite partnership and cooperation.

There is an iconic film in Hungary, and its equally iconic phrase goes like this: "We need a team!". We can count ourselves lucky that our faculties make a good team. To make it all work, however, we need to have good team members. Here, I would like to express my gratitude to Prof. Belling, Prof. Assmann for their invaluable support, and to Professors Elemér Balogh and Attila Badó, and to Ibolya Almási for their effective contribution.

The timing of the conference also holds a symbolic meaning: the academic year 2021-2022 marks a significant moment in the life of the University of Szeged. On 12 May 1581, István Báthory, Prince of Transylvania and King of Poland, signed the founding charter of the Jesuit Academy of Kolozsvár in Vilnius, thus laying the foundation for the University of Szeged. The university, bearing the name of the Emperor Franz Joseph I from 1881, was forced to seek refuge outside Transylvania in 1921, and thanks to a decision by Parliament, it found a new home in Szeged. This academic year also marks the 440th anniversary of the founding of the university and the 100th anniversary of its relocation to Szeged.

The University of Szeged continues to maintain its position of excellence in this year's QS university world rankings, published on 6 April, ranking 551-560th, making it the number one university in Hungary. As the knowledge base of academic excellence and a twelve-faculty university with more than twenty-two thousand students, the University of Szeged encompasses all fields of study. In addition to research and education, patient care comprises one of its core activities. The university plays a key role in the development of the region.

The venue of this conference is also emblematic, as this year Novi Sad is celebrating its status as Serbia's first European Capital of Culture. Its multicultural past and present convey a vital message: Not only does it act as a bridge spanning over chronologies in time, languages, religions and cultures, but it also creates a synthesis between science and culture. The venue and the title of the conference are also intertwined: Novi Sad

I would like to extend my thanks to the Rector and the organisers for making today's conference possible, and for creating an opportunity for all of us to articulate the importance of values and our commitment to law and peace.

May this conference be a success!

Thank you for your kind attention.

KEYNOTE SPEAKERS

Prof. Dr. Dragutin Avramović

Born in Belgrade in 1980. He graduated from the University of Belgrade Faculty of Law in 2003 with average grade 9.87 out of 10.00. He was firstly volunteering in judiciary within the First Municipal Court in Belgrade, and passed the Bar exam in 2006. In 2009 he received academic degree of Magister (*magister iuris*, M.A.) from the University of Novi Sad Faculty of Law with the thesis "Declaring State of Emergency". He received his PhD degree from the same University in October 2011 having defended *cum laude* dissertation "Contemporary Legal State (Rechtsstaat) – Aspects of Legal Theory".

In 2004 he was elected Teaching Assistant in Introduction to Law at the Police Academy in Belgrade (now the University of Criminal Investigation and Police Studies). In 2009 he was promoted within the same institution to the position of Teaching Assistant both in Introduction to Law and in Constitutional Law. He was engaged in teaching activities within the Master course "Police and Human Rights", and served as Secretary of the Department for Legal Sciences. In 2012 he was elected Assistant Professor at the University of Novi Sad Faculty of Law in Introduction to Law, while he is also teaching Rhetoric (at the Faculty of Law as well as at the Academy of Arts, University of Novi Sad). At master level he is teaching History of Political and Legal Theories and Legal Philosophy, as well as master course Introduction to Law at the University of Novi Sad Faculty of Philosophy. At doctoral level he is teaching Methodology of Scientific Research, Theory of State and Law and Theory of Legal State and State of Emergency. He was a mentor of many candidates in attaining master degree, as well as of two candidates at PhD degree. He has been appointed Associate Professor in 2017 and Full Professor in 2022.

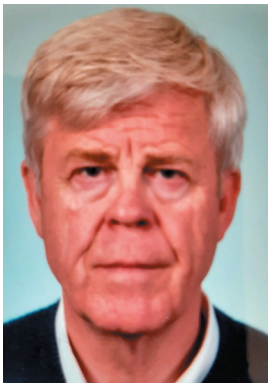
He participated at different international and national conferences with contributions, such as „Constitutional Challenges: Global and Local", IX Congress of International Association of Constitutional Law, University of Oslo Faculty of Law, Oslo 2014; „Scientific Legacy of Radomir Lukić", Serbian Academy of Scienc-

es and Arts and Faculty of Law University of Belgrade, Belgrade 2014; "An Outlook upon the Constitution of Serbia – ten years later", Faculty of Law University of Belgrade and Serbian Jurist Club, Belgrade 2016; „Greek Drama, Law, and Politics", Faculty of Law, Aristotle University of Thessaloniki and Faculty of Law, Democritus University of Thrace, Thessaloniki-Komotini 2017, etc. During 2018 he participated in ERASMUS+ program as exchanged teacher at Faculty of Law, University LUMSA, Palermo (Italy). He was a member of organizing committee of few international scientific conferences.

He was involved in a few projects, having been Secretary of the one financed by the Ministry of Education and Sciences of the Republic of Serbia, titled "Development of institutional capacities, standards and procedures in opposing organized crime and terrorism". He was also engaged in the University of Novi Sad Faculty of Law project "Legal Tradition and New Legal Challenges", as well as in the project "Theoretical and practical problems of creation and application of law: Serbia and the EU". He published four books (two as author, and two as coauthor) and more than 50 academic articles.

He is President of the Committee for Statutory Issues at the University of Novi Sad and a member of the commissions entitled to draft legal acts of the University. At the Faculty of Law of the University of Novi Sad he is Vice-President of the Faculty Council, and the head of the Department of Theory of State and Law. He is a member and one of the founders of the Serbian Jurist Club (SJC), supervisory Board member of the Science Technology Park Novi Sad, a member of the Center for rhetoric *Institutio Oratoria*, he served as Secretary of the NATEF (Novi Sad Association for Theory, Ethics and Philosophy of Law), etc. By the decision of the Ministry of Justice of the Republic of Serbia he is an appointed member of the Bar Exam Board of examiners for Constitutional law and Judiciary organization law. He is engaged by the Ministry of Justice of the Republic of Serbia as a member of the drafting team to amend a set of laws in judiciary. He is also a lecturer at the Diplomatic Academy within the Ministry of Foreign Affairs of the Republic of Serbia.

Prof. Dr. Eckart Klein



Eckart Klein, born in 1943 (Oppeln, Upper Silesia), after military service studied law at the Universities of Freiburg/Breisgau, Göttingen, Lausanne (Switzerland) and Heidelberg where he graduated in 1968. After the second State examination 1971 he was promoted to Dr.iur.utr. (1973 Heidelberg) and worked as law clerk with the President of the Federal Constitutional Court in Karlsruhe (1972-74). Later on he was senior research fellow at the Max Plack Institute for Comparative Public Law and Public International Law in Heidelberg until 1981 when he was appointed Professor at the Law Faculty of the Johannes Gutenberg University of Mainz (Chair for Public Law, Public International Law and European Law). In 1994 he changed to the newly founded University of Potsdam, Faculty of Law (Chair: Constitutional Law, Public International and European Law). He was founder and director of the Human Rights Centre of the University. He retired in 2008.

Eckart Klein served from 1984-1994 as Judge at the Higher Administrative Court of the Land Rhineland-Palatinat (Koblenz) and from 1995-2001 as Judge at the Higher Administrative Court of the Land Brandenburg. From 1995-2011 he was Judge of the Constitutional Court of the Land Bremen, 1995-2002 Member of the UN Human Rights Committee (New York, Geneva) and 1996-2007 Member of the Advisory Board of the German Foreign Office for UN Policy. Between 1998-2011 he was appointed Judge ad hoc in six cases against Germany at the European Court of Human Rights (Strasbourg).

Eckart Klein has held Guest professorships at Universities in France (Paris XII-Asnière and Paris X-Nanterre), the United States of America (St. Thomas, Miami, FL) and Austria (Vienna) and lectured at many foreign Universities as Szeged (Hungary), Moscou and Ufa (Russia).

Prof. Dr. László Trócsányi

László Trócsányi was born in Budapest, Hungary in 1956. In 1980, he became a doctor of law and political sciences after successfully graduating at the Faculty of Law of Eötvös Loránd University, Budapest. In 1985 he passed the bar exam and became a member of the Budapest Bar Association.

After his first job as legal librarian at the Hungarian Parliamentary Library, from 1981 until 1988, Mr. Trócsányi started working as a research assistant then research associate at the Institute for Legal Studies of the Hungarian Academy of Sciences.

In 2000, he became professor at the University of Szeged, then in 2004, Director of the International and Regional Studies Institute, IEP- Lille partnership, Senghor University partnership International Relations BA and MA studies.

Between 2007 and 2009 he was Guest professor at the Faculty of Law, University Jean Moulin Lyon 3, and Guest lecturer at the Catholic University of Louvain. Also, between 2014- 2018 Mr. Trócsányi was a research Professor at the National University of Public Service, Hungary.

He has been a research Professor at the Faculty of Law, Károli Gáspár University of the Reformed Church in Hungary since 2018.

The President of Hungary appointed Mr. Trócsányi in 2000 as Ambassador to Belgium, and Luxembourg, where he represented Hungary until 2004 (in Luxemburg until 2003). Between 2004 and 2007, he was the President of International Relations Committee of the Budapest Bar Association. From 2007, he served as a Judge of the Constitutional Court. In 2010 he continued his diplomatic career when once again, he became Ambassador, this time to France.

From 2014 to 2019, László Trócsányi was Ministry of Justice of Hungary, from he resigned in 2019 to become a Member of the European Parliament.

Besides his professional and educational activities, Mr. Trócsányi was Substitute member, Venice Commission, Council of Europe between 2005 and 2013. Since 2015, he has been member of the Board, European Public Law Organization.

Mr. László Trócsányi has been awarded by numerous countries: in 1996 he received the Palmes Académiques from the French Government, in 2002 he became Grand Officer Class of the Order of Leopold II (Belgium). In 2005 he received the Pro Universitate Award from the University of Szeged and the Eötvös Károly Award from the Budapest Bar Association. He became Doctor Honoris Causa at the UNE, Uzhhorod in 2016 and at University of Miskolc in 2018. In 2018, he became Honorary Citizen of Csongrád County. In 2018 he was honoured by the Knight's Cross of the Order of Merit of the Polish Republic and in 2019 he became Commander of The National Order of the Cedar of the Republic of Lebanon.

ABSTRACTS

UDK: 341.67+341.3

*Dragutin S. Avramović**

PEACE AND THE RULE OF LAW – CONTEMPORARY CHALLENGES

The main topic of this International Conference cannot be more tangible and sensitive in the year when the world is facing a war in Ukraine and countless practical and theoretical challenges. One usually takes peace for granted and only when the peace becomes jeopardized people become aware that it is a basic, the most important and most precious social value. At the same time contemporary wars have mainly been declared to be fought for the sake of the rule of law. The inevitable, provocative but essential issue is whether proclamation of the rule of law, as an incontestable value of modern societies, could encourage war, or build and keep the peace? If rule of law builds the peace, is it exclusively "a liberal peace"? Is it possible today to perceive the existence of peace as a value beyond "liberal peace" framework?

One may claim that desire for peace originates from human reason itself. As peace has been a political and legal ideal since ancient up to modern times, the author analyses dominant understandings of peace throughout history. He tends to show that specific attention directed to peace, as one of the supreme values, came into a solid focus not before rationalist natural law theory of modern era.

The author also examines a relationship between peace and rule of law having in mind the double faceted, Janus-like, character of rule of law and a fact that this doctrine of modern times is a product based primarily upon human reasoning (as well as peace). In the same manner as "legal state" (*Rechtstaat*), the rule of law has also its own two aspects, formal – procedural and substantial – material. He follows Peerenboom`s differentiation between *thin*

* Dr. Dragutin S. Avramović, Full Professor, University of Novi Sad Faculty of Law, Serbia
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(procedural) and *thick* (substantional) rule of law and the standing that different types of *thick* rule of law conception inevitably exist. Consequently, he holds a stand that contemporary challenges, considering relationships between peace and rule of law, should be conducted within the framework of accepting the idea of value pluralism in defining the rule of law. Although the rule of law is frequently used today as a mantra, its clear theoretical definition is rare. Defining that concept is particularly complicated as almost everyone (both in theory and among wider public) has its own, specific understanding of what the rule of law is. Therefore, theoretical elaboration of the rule of law is a very useful and necessary undertaking in general, and particularly in perceiving relationships between peace and rule of law.

Having in mind that peace is a basic, universal social and legal value and substantial prerequisite for realisation of all other values, the author observes complex relationship between peace and the rule of law. In that relationship of mutual dependence one of the disputable matters could be the one which resembles a chicken-and-egg dilemma: what of the two is preceding factor, what is older, what should be considered as the cause and which should be regarded as a consequence. Is peace a required environment for the rule of law establishment, or the rule of law is a necessary presumption for the peace? Answer to that question depends primarily on how the rule of law is perceived.

Following the prevalent view that the rule of law is a formal/material concept which implies that it has both institutional and value aspects, the author takes a standpoint that value-openness of rule of law concept should be regarded as its advantage and not as its weakness. The author criticises one-sided perception of rule of law based exclusively upon ideology and values of liberalism, as well as the tendency among western countries to present that vision of rule of law as the only one which is able to ensure peace. According to the position of liberal scholars, without "liberal peace" a war and disorder would govern. However, the reality proves that imposition end export of liberal version of the rule of law and the tendency to establish universal "liberal peace" could also feed in some circumstances wars and conflicts.

Correlation between peace and the rule of law is required but is not necessary (if one perceives the rule of law in its "thinnest" form – existence of an order). However, without peace it is not possible to establish any kind of value-based "thick" rule of law. On the other hand, no one-sided value-burdened vision of rule of law is necessary prerequisite for the existence of peace and order. The

author believes that if there is a wish to take a step in the direction of “perpetual peace” in the Kant’s sense, necessary presumption is tolerance and open-mindedness toward different ideological (value) models of rule of law of all states.

Keywords: Legal Values; Liberal Peace; War; Rule of Law.

UDK: 342.56(4-11+4-191.2)

*Attila Badó**

UNFRIEDLICHE UND GUTE SCHÜLER. JUSTIZREFORMEN IN MITTEL-UND OSTEUROPA IM HINBLICK AUF DEN BEITRITT ZUR EUROPÄISCHEN UNION

In dieser Vorlesung werden die wichtigsten verfassungsrechtlichen Grundlagen der Justizsysteme der postsozialistischen mittel- und osteuropäischen Länder vorgestellt. Das Justizsystem der untersuchten Rechtssysteme wird durch die Darstellung der verfassungsrechtlichen Grundlagen und der in den wichtigsten Gesetzen niedergelegten Regeln unter Anwendung der Literatur über die Institution dargestellt. Nach der Klärung der strukturellen Fragen und der verfassungsrechtlichen Stellung der Gerichte, den zentralen Formen der Verwaltung, wird beurteilt, inwieweit die bekannten Aspekte der richterlichen Unabhängigkeit und der Rechenschaftspflicht bei der Rechtspflege in einer bestimmten Rechtsordnung eine Rolle spielen. Im Mittelpunkt der Analyse steht der viel zu wenig beachtete Begriff der richterlichen Unabhängigkeit. Dabei geht es um die organisatorische Unabhängigkeit der Justiz, die einerseits das Verhältnis der Gerichte zu den anderen Gewalten bestimmt, den tatsächlichen Ermessensspielraum der Richter festlegt und andererseits Aufschluss über die Reformen der mittel- und osteuropäischen Justizsysteme auf ihrem Weg zur Demokratie nach Diktatur und Einparteiensystem geben kann. Dies kann auch Aufschluss darüber geben, wie sie versucht haben, die Anforderungen des europäischen Beitritts zu erfüllen und wie sie auf die gesellschaftlichen Bedürfnisse reagiert haben.

Schlüsselwörter: Mittel-und osteuräische Justizsysteme; Rechtpflege; Richterlichen Unabhängigkeit; Reformen.

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GASTRONOMY AND FOOD SAFETY – CIVILISTIC ROOTS OF NEW LEGAL EVOLUTION

'Gastrronomy is the science and arts of correlation between culture and food.' 'Gastronomy is an intelligent knowledge about all that relates on nutriments'. 'Gastronomy doesn't treat only with cooking, but also studies numerous ingredients or elements of culture, starting from the food.'** In this way arts, social, natural and technological sciences can attach to each other. Gastronomist units theoretical and practical approach, where 'theoretical gastronomy supports practical gastronomy'.*** Study of gastronomy covers the examination of genesis of food and beverages.

Law regulates social and economic relationships between persons. Law is not independent from the social and market conditions of countries. Legislative organs of state have exclusive right to adopt obligatory legal acts for citizens; the scope of legal regulation is territorial. Law roots in national traditions, it is the result of historical, social and cultural evaluation of states. 'Law in its real nature is the feeling process that goes in humans: law science is one part of human psychology'.**** Food is the nourishment of human body and soul. Private law is the law of everydays between individuals that is arisen from deep roots of social operation.

Different legal cultures and systems exist all over the world. From the second half of XXth century universal endeavour ap-

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** Gasztronómia – Wikipédia (available https://hu.wikipedia.org/wiki/Gasztron%C3%B3mia Visited on 31 March 2022)

*** Gastronomy – Wikipedia (available https://en.wikipedia.org/wiki/Gastronomy Visited on 31 March 2022)

**** Szászy-Schwarz, Gusztáv: Parerga – Vegyes jogi dolgozatok. Atheneum. Budapest, 1912. 6. p.

peared at international level to compose a common legal framework for special industries or particular fields of law. Principles, minimum requirements or model rules were articulated in a wide range of legal sources (international conventions, standards, model law) across nations.

Food safety rules were established under the aegis of FAO-WHO at international level. Harmonized international food standards, guidelines and codes of practice are collected in the Codex Alimentarius. The Codex is a collection on scientific-based adopted safety, hygienic and technical recommendations all over the world. The European Union is in partnership and cooperation with FAO, so obligatory legal norms of food safety take into consideration these universal achievements at union level. Legislative organs of the EU adopted numerous regulations in the field of food safety that are directly applied in all Member States.

Legal environment of food hygiene leaves a space for predominance of individual circumstances of food business by legal interpretation. This is an adjudicative cord standard of private law. Definitions, the core of uniformized principles and applied legal methods at international level feed from national legal traditions and compose today an universal legal network or umbrella all over the world. Interpretation of particular international rules can provide effective results of evaluation of domestic law in our changing world. Law can retain its competitiveness and stability if law enforcement glances at appreciation of the meaning of global determined legal institutes in the international practices.

Keywords: Food Safety; Private Law; International Law; Interpretation Method; Legal Culture.

UDK: 341.67:342.56

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LEGAL PEACE THROUGH LEGAL PROTECTION AGAINST ADMINISTRATIVE DECISIONS

I. Introduction

(1) Legal peace refers to a state in which no legal disputes exist, either because they have been terminated in proceedings governed by the rule of law, or because they do not arise or cannot arise again as a result of the terminated proceedings, so that legal peace is maintained.

(2) Regardless of their legal form, administrative decisions can affect legal peace, either because they burden persons or because persons are refused benefits. These persons may be natural persons, legal entities under private law or legal entities under public law.

II. Constitutional basis of legal protection against administrative decisions

(3) Art. 19 para. 4 cl. 1 and 2 of the Basic Law provide: If a person's rights are violated by public authority, he or she shall have recourse to the courts. If no other jurisdiction is established, legal action shall be had through the ordinary courts. The regulation standardizes a fundamental right. The constitutional guarantee of legal protection is regarded as the "keystone in the vault of the constitutional state" (Richard Thoma).

(4) The regulation contains a fundamental decision for a system of subjective legal protection. The protected legal positions do not result from the guarantee of legal protection, but are presup-

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posed by it. At the same time subjective legal protection serves the objective review of legality.

(5) The guarantee of legal protection ensures the access to courts as well as the effectiveness of legal protection. Effective legal protection fundamentally includes the duty of the courts to review administrative decisions fully in terms of law and fact. Legal protection must also be available within a reasonable period of time, including interim relief. Court decisions must also be enforceable, including against administrative bodies.

III. Legislative design and current problems

(6) The legal basis for legal protection against administrative decisions is primarily the Code of Administrative Court Procedure, and subsidiary the Code of Civil Procedure. Legal protection against administrative decisions is provided not only by administrative courts, but also by social courts, fiscal courts and the ordinary courts.

(7) Paragraph 1 of the Code of Administrative Court Procedure provides: Administrative jurisdiction is exercised by independent courts separate from the administrative bodies.

(8) In Germany, legal protection by the administrative courts basically comprises three instances. However, the number of exemptions has grown steadily in the past and will likely continue to grow in the future to expedite licensing procedures for much-needed infrastructure projects.

(9) The most important process principles in administrative proceedings are the principle of party disposition, the principle of judicial investigation, the principle of the right to be heard and the principle of public trial. In particular, the inquisitorial system serves to ensure “equality of arms” between the citizen and the administrative authority as far as possible.

(10) The Code of Administrative Court Procedure provides various types of lawsuits for legal protection against administrative decisions. The most important of these are the action in rescission of an onerous administrative act, the action for the issuance of a favorable administrative act, the action for performance, the declaratory action and the judicial review of a legal norm.

(11) Contemporary times hold considerable problems and challenges for the conduct of administrative proceedings. In particular, these include the increasing complexity of many administrative decisions, the number and duration of administrative court

disputes, the digitalization of judicial proceedings and the Europeanization of administrative law.

IV. Conclusion

(12) Legal protection by administrative courts against administrative decisions makes an important contribution to restoring and maintaining legal peace, because administrative authorities, due to the state's monopoly on the use of force and the citizens' dependence on state services, act in a variety of ways to regulate and shape the law.

Keywords: Legal Peace; Guarantee of Legal Protection; Independent Courts; Process Principles.

UDK: 341.67:343.1

*Snežana S. Brkić**

THE IDEA OF PEACE AND CRIMINAL PROCEEDINGS

This study considers the relationship between criminal proceedings and the idea of peace as one of the fundamental and most important common social and legal values. This considerations groundedon an integral (three-dimensional) understanding of law, as opposed to its reductionist conceptions. In that sense, certain legal institutions can be viewed from the normative aspect, as well as from the sociological and value aspect. The axiological dimension of law implies that law is permeated by certain values that project relevant social relationships. These values exist independently of reality. They exist as a requirement of need, whether it is met or not. Hence, legal science must not be satisfied only with the dogmatic interpretation of positive legal norms, but should also evaluate certain legal institutions from the point of view of desirable legal values as positive or negative. A necessary presupposition of this study is to conceptually define, i.e. to establish how we understand the essence of criminal proceedings, on the one hand, and the value of peace, on the other hand.

Criminal proceedings have an instrumental character, because they are not an end in themselves, but only a means to reify criminal substantive law, with which they are connected by the same ultimate goal – protection of society from crime. In the historical sense, the genesis of criminal proceedings is related to the emergence of the state and law. The original criminal law developed from the former total collective blood feud, which was gradually limited and individualised, only to later give way to the principle of talion and then to the system of voluntary composition. In order to prevent arbitrary, uncontrolled, unjustified and excessive individual or group reactions to socially unacceptable forms of be-

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haviour, the state took upon itself to maintain order and public peace, thus sanctioning such behaviours.

In the narrowest sense, the value of peace means the absence of war, which is not a value, but a non-value. In a broader sense, the point of peace is to prevent violence. Therefore, the question arises as to whether criminal proceedings as a form of social control that relies on the apparatus of state enforcement is compatible with the notion of peace at all. This question should be answered in the affirmative, bearing in mind that the correctly understood legal valueof peace does not exclude any form of violence, but only the use of force by individuals or collectives that is arbitrary and illegal. Moreover, the value of peace not only does not exclude, but indeed entails the application of controlled, organised, state enforcement appropriate for prevention of any form of individual or collective violence that has no legal justification. Hence, law, criminal proceedings included, can be considered to be the most effective instrument for ensuring the value of peace. Prescribing punishment for delinquent behaviour, as well as its imposition in criminal proceedings, is necessary for maintaining legal peace. This is very important, because the state of peace is a prerequisite for actualising other legal values, such as order, security, justice, etc. In addition, the state of peace enables the actualisation of the supreme social value – the Good, which basically means survival of the world and people in their human dignity.

The value of peace entails relatively harmonious and civilised relationships among people, which does not mean that it excludes every form of conflict and struggle between them. Therefore, the idea of peace can be reaffirmed within the criminal proceedings understood as an institutionalised conflict between two (preferably equal) parties who are fighting for their rights before the court. It is the final verdict of the criminal court that resolves the conflict situation created by the commission of the criminal offense in a peaceful manner.

Some modern criminal proceedings that are infused with the spirit of cooperation and consensualism affirm the value of peace between the prosecutor and the accused in an even more pronounced way. They primarily characterise Anglo-Saxon law, but lately, they have increasingly penetrated the European continent. Among them are, for instance, the procedures of reaching agreement between the public prosecutor and the defendant about the confession of a criminal offense and their negotiation on a criminal sanction that the court is to approve and impose. This style of behaviour deviates from the classical notion of criminal proceed-

ings as a conflict between opposing parties, on the one hand, and the court as an inviolable arbitrator, on the other. Cooperativeness and consensualism of the parties in proceedings can be of multiple importance, both from the aspect of general and individual interests. However, that does not mean that such actions are legitimate from the aspect of other legal values, such as the value of truth.

Finally, the code of criminal proceedings can uphold the legal value of peace between the accused and the injured party. So, in summary criminal proceedings for instance, if they are conducted for a criminal offense prosecuted on the grounds of a private lawsuit, it is obligatory to schedule a special hearing in order to inform the parties about the possibilities of out-of-court mediation. Various diversionary models of proceedings can lead to similar effects if they are based on concept of restorative justice.

Keywords: Criminal Proceedings; Peace; Plea Bargaining; Restorative Justice.

UDK: 342.2:614

*Erzsébet Csatlós**

BEING A THREAT TO NATIONAL SECURITY AND PUBLIC HEALTH VS. ADMINISTRATIVE LAW GUARANTEES

National security is always a core value for all States, however, the global pandemic has turmoiled it just as it had done for almost all aspects of life. Shutting down of borders and pandemic measures from curfews to serious restrictions on the freedom of movement of persons were ordered to protect national health and security. Therefore, the study aims to look for the exact causes of the increased number of expulsion-related constitutional complaints that appeared before the Constitutional Court of Hungary during the first two years of the pandemic as the Constitutional Court is the competent organ to assess the alleged unconstitutional nature of court decisions. The question is how public health concerns appear as grounds for the decisions under such an extraordinary situation caused by Covid-19 and it also seeks to know the effects of the pandemic and the state of emergency that have presumably caused changes in the national security and public security concerns towards third-country national residents that has led to questions of unconstitutionality.

The legal guarantees connecting to the factual and legal grounding of both administrative and judicial decisions as well as their relationship with the effective judicial review emerged in a surprisingly high number of the examined cases. Examined from the procedural guarantees of legally residing third-country nationals in the territory of the country, the factual and legal issues of decisions on expulsion and re-entry and residence are thus the focus of the study. Exploring the legal basis for this, compared to the relevant case-law of the Supreme Court, and also the interna-

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tional and EU law requirements. The similarity among the cases lies in the issues related to the factual reasoning of the expulsion whenever the threat of *national security, public security or public order* serves as the legal reason for the decision, and it has serious consequences on the right to effective legal remedy. As the practice has shown, in the view of certain legal practices it is not necessary to make a distinction among the three intertwined terms *'national security', 'public security' and ' public order'* as no matter which is used in a concrete case, they fall under the same legal provision; the three terms form one expression. Also, the legal concerns are the same, and it has nothing to do with health issues. Unfortunately, the authority decisions are not available to get further to the source of the problem, although, as a general conclusion stemming from the studied cases, the reason for expulsion seems to be indisputable and shadowy under the cover of *national security, public security or public order.*

It can be concluded that both the access to documents containing classified information and the legal remedy possibilities against thus the different aspects of the expulsion decision are a set of completely independent and unrelated procedures, which ultimately results in a chaotic picture. However, despite the legal remedy tools, the facts on which the expulsion is based seem to be untouchable and indisputable. In the view of the foreigner, such a situation is, however, confronting with the right to *effective* legal remedy and makes the whole procedure from the beginning until the end of the judicial phase a formal one.

Keywords: National Security; Public Order; Public Safety; Expulsion; Classified Information.

UDK: 341.67:347.965.42

*Dragana M. Ćorić**

MEDIATION AS AN EFFECTIVE DISPUTE RESOLUTION MECHANISM

We live in a world full of everyday challenges, raising conflicts, strong emotions and great lack of empathy(which is very needed, especially in this pandemic time). Often people are not able to see rational position of the other side and understand the same. There is also a lack of awareness of the possibility of negotiation and that making small concessions on each side, with prior understanding of the other party's position, can lead to a faster, simpler and equally satisfactory solution for all parties to the dispute. Special knowledge and skills of mediators lead the parties to the dispute (or if the procedure has not yet been officially initiated, and there is a conflict of opinion, attitudes and demands) to such a solution that is acceptable to both parties and both parties equally agree with that solution. Achieving agreement of the parties to the conflict over the solution is one of the greatest advantages of the mediation procedure compared to any other court procedure (which ends with the decision of a professional judge, in accordance with his understanding and knowledge of the law and is accompanied by frequent dissatisfaction of one or both parties to the dispute).

Mediation is often defined as interactive, structured process in which third, neutral party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. This is a process in which conflicted parties, not their legal advisers, have „the last word" about how to end dispute. Mediation is focused on identifying needs, rights, and interests of the parties, and on helping parties to find their mutual in-

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terest and „language“ that will fullfil their needs equally and make them both feel like they –won.

Due to this concept of mediation, mediator needs to know more than simple rules of mediation and to follow them strictly. He/she must know : how to read nonverbal signs of the parties in conflict; how to , through coaching process and asking propair questions, find out about their needs and interests and how to lead to the mutual solution; how to deal with difficult people and to calm the situation; how to preserve his/her own limits and to protect himself/herself; how to listen and understand people before him/her with empathy and not ever come to one of the sides; how to be a support, and not a judge(which is far more difficult than anyone can imagine). Mediator also must know how to negotiate, to have a patience and a great amount of understanding of positions taken by the parties.

What are the good sides of the mediation process? Costs are much lower, although mediator has a right to charge a fee. Mediator is devoted to finding a solution on the one dispute, so mediating sessions can last even for few hours (judges don't have that much time for single case).

Due to serbian national law, mediator doesn't have to have a legal education, because a lot of techniques he/she uses can be adopted at a common sense level.

Court hearings are mostly open for public, but mediation process rests on confidentiality and excludes public presence. Even the notes that mediators sometimes are writing during the process are destroyed once the process is over.

In mediation process all control of the process is upon the conflicted parties, unlike court proceedings in which the judge has control over all segments of the proceedings and over the decision itself and its content. Since the decision in mediation was reached with the active participation of both parties and their mutual consent, mediation agreements last longer than court judgments. The mediation decision is absolutely acceptable for the parties, because the solution that ended their dispute is a solution that they devised themselves, and they do not agree to the imposed solution of a third party.

Of particular importance in the mediation process are the mediator‘s ability to control the situation, deal with difficult people and circumstances, all in a peaceful, steady manner, without the threat of fines or other penalties. The parties joined the procedure voluntarily and remain in it as long as they wish, ie they are

free to leave it at any time when they wish, which is not possible in court proceedings. The mediator supports equally both parties to think „outside of the box“ for possible solutions to the dispute, broadening the range of possible solutions.

All abovementioned reasons make the mediation proces the most efficient way to resolve disputes. Conditioning that the parties in certain types of disputes first turn to a mediator, and only if the mediation procedure fails to enter the court procedure, will significantly reduce the pressure on the Serbian judiciary as a whole. On the other side, mediation process makes the mediatorsto evolve and learn constantly, in order to help people end their disputes and live in peace with themselves and others.

Keywords: Mediation; Mediator; Dispute Resoultion; Efficiency; Confidentiality.

UDK: 341.3(497.11 Beograd)"1521"

*Pál Diószegi Szabó**

BETWEEN PEACE AND WAR. THE LEGAL RESPONSIBILITY OF CAPTAINS OF THE FORTRESS IN THE OTTOMAN SIEGE AGAINST BELGRADE (1521)

The stronghold of Belgrade (Nandorfehervar) was a primary target of the Ottoman conquests for a long time. After the decease of Matthias of Hunyad, king of Hungary, in 1490 and under the reign of Wladislaw II, these attacks were not commanded by the sultans or by the army of the sultan until 1521. Occasionally smaller Ottoman troops also tried to besiege this fortress. I separate these 'small-sieges' from the 'great' ones (1440, 1456, 1521). In 1521 the new sultan, Suleyman I attacked the southern frontier of the Hungarian Kingdom, but his main target was the key to Hungary, Belgrade.

After 60 days of siege the fortress was captured on 29 August. This was the third 'great' Ottoman siege against Belgrade. In the focus of the Hungarian policy was the responsibility of the captains. By the time the Ottoman army began to besiege, the two noble chief-captains (Francis of Hederwar and Valentine Török) had already left the fortress. At the same time they mandated with defending the fortress two vice-captains.

The fame of the fall of Belgrade had great international reverberations. On 30 September in Camp of Mohacs king Louis II had accused chief-captains of high treason *'nota infidelitatis ad quam ipsi propter amissionem castrorum NandorAlbensis*'. He sequestered all their lands and properties. We have some new deed of gift of new devotees of king Louis II and the judgement letter against Francis of Hederwar is remained for us.

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In my presentation I examine the legal sources and regulations of traitors of border fortresses (*traditores castrorum*) in the Hungarian Acts of Parliament (*Corpus Juris Hungarici*). I follow the medieval legislating progress (1461–1523), especially the articles which concern the legal responsibility of these Captains. I analyze the judgement letter against of Hederwar, which was issued in royal hight court of *praesentia regia* in Visegrad on 15 June in1523. The judgement letter states that Hederwary left the fortress and gave the captaincy over to Michael Moré against of protest of the crew. By the time the royal army arrived, Moré had already left the castle for the sultan's Camp. In the judgement letter the capital crime was also mentioned (*sententia capitalis*). This was crime and all Hederwary's lands and properties were devolved to the Hungarian Holy Crown. So the king Louis II donated several lands from the devolved ones. This judgement letter also contains the transcription letters of other deed gifts from which we can gain the most important information about the different legal designations of the responsibility (*improvidaque custodia, incuria et negligentia, mala provisio et incuria*). According to the available data, the special responsibility of the captain, similar to the Roman *custodia*, is taking shape. This was probably the basis of accountability, which contained the due care, foreseeable safekeeping of the border fort, maintenance of the building.

As reported by the Hungarian historians (Nicolas Istvánffy, George Szerémi) Francis Hederwary died in exile. In case of Valentin Török, we do not have much information. Török evaded culpability and ran to John Szapolyai for protection. Two years later he received a royal pardon and got married to a lady of attendance of the Queen Mary of Austria.

Keywords: Suleyman I; Ottoman Siege; Belgrade.

UDK: 347.181:341.4

*Andor Gál**

HUNGARIAN CRIMINAL LAW PROTECTION ON THE RIGHT TO INFORMATION SELF-DETERMINATION

The domestic regulation of the right to information self-determination is directly affected by the data protection reform of the European Union, under which the European Parliament and the Council – as co-legislators – decided to adopt two pieces of EU legislative acts in 2016: the General Data Protection Regulation [GDPR – Regulation (EU) 2016/679] and the directive on the processing of personal data for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties [Directive (EU) 2016/680].

Regarding the criminal law protection of personal data, it is worth noting that the GDPR has no unifying effect in this regulatory area. According to the Preamble Paragraph (149) of GDPR: "Member States should be able to lay down the rules on criminal penalties for infringements of this Regulation, including for infringements of national rules adopted pursuant to and within the limits of this Regulation. Those criminal penalties may also allow for the deprivation of the profits obtained through infringements of this Regulation." In this context, the development of the rules on data protection in criminal matters remains fully within the competence of the Member States.

Based on all this, to ensure the proper entry into force of the regulation and the fulfilment of the narrow legislative obligation arising from the GDPR, as well as the transposition of the rules of the Directive, in the national law level became necessary to amend new legislation. In this context, the relevant rules of Act C of 2012 on the Criminal Code have been renewed since 25 May 2018, while

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the provisions of the code on the protection of personal data were amended only later, with effect from 26 July 2018.

These changes obviously influence the rules of criminal law protection of personal data, as well as the framework of criminal liability. Therefore, the main purpose of this paper is to present the key and current features which determine the regulation on the protection of personal data in the Hungarian criminal law.

First, I define the content of the protected individual interest. In connection with this, I present the certain stages of the development of legal protection, and the current prevailing interpretation of the ratio legis of the criminal offence.

In the second step of my examination, I focus specifically on the circumstances how have been incorporated the new rules of GDPR into the national criminal law.

After that, I analyse the elements of the statutory definition of the crime "Misuse of personal data" which is regulated in the Hungarian Criminal Code.

Keywords: Personal Data; Purpose of Financial Gain; Significant Harm; Right to Informational Self-determination; Unauthorized Data Processing.

UDK: 004.8:342.734

*József Hajdú**

THE INFLUENCE OF EU AI REGULATION ON EMPLOYMENT

Artificial intelligence (AI) is at the heart of the digital transformation and can significantly bolster the European economy and jurisprudence. States and companies around the world are all pushing hard to win the AI race. However, a number of core legal questions are still unresolved. Artificial intelligence (AI) is of strategic importance for the EU as well, with the European Commission stating that ‚artificial intelligence with a purpose can make Europe a world leader'. For this to happen, though, the EU needs to put in place the right ethical and legal framework. The EU's digital strategy aims to make this transformation work for people and businesses „smooth".

While AI can do much good, including by making products and processes safer, it can also do harm. This harm might be both material (safety and health of individuals, including loss of life, damage to property) and immaterial (loss of privacy, limitations to the right of freedom of expression, human dignity, discrimination for instance in access to employment), and can relate to a wide variety of risks. A regulatory framework must concentrate on how to minimise the various risks of potential harm, in particular the most significant ones.

Recent developments in Artificial Intelligence (AI) have stoked new fears in labour market about large-scale job loss, stemming from its ability to automate a rapidly expanding set of tasks (including non-routine cognitive tasks). Furthermore, there are concerns about employee well-being and the broader work environment, linked to the idea that AI may soon become pervasive in the workplace and threaten and undermine humans' place in it. How-

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ever, AI also has the potential to complement and augment human capabilities, leading to higher productivity, greater demand for human labour and improved job quality.

From a theoretical perspective, the impact of AI on employment and wages is ambiguous, and it may depend strongly on the type of AI being developed and deployed, how it is developed and deployed, and on market conditions and policy. AI is likely to reshape the work environment of many people, by changing the content and design of their jobs, the way workers interact with each other and with machines, and how work effort and efficiency are monitored. However, the empirical evidence based on AI adopted in the last 10-15 years does not support the idea of an overall decline in employment and wages in occupations exposed to AI. While AI is capable of performing some non-routine cognitive tasks, some bottlenecks to adoption still remain, and many tasks still require humans to carry them out. Thus, much of the impact of AI on jobs is likely to be experienced through the reorganisation of tasks within an occupation. Certain groups of workers may be more capable or better positioned to take advantage of the benefits that AI brings, use AI in a way that is complementary to their work, and avoid its negative impacts.

AI can play an important role in facilitating human-machine collaboration, helping workers in the execution of tedious or physically demanding tasks while allowing them to leverage their own uniquely human abilities. However, the same AI applications could also entail significant risks for the work environment, especially if applied badly or with the singular motivation to cut costs.

One of the fundamental risks related to the use of AI concern the application of rules designed to protect fundamental rights (including personal data and privacy protection and non-discrimination), as well as safety and liability-related issues.

The use of AI can affect the values on which Europe and apparently the EU was founded and lead to breaches of fundamental rights, including the rights to freedom of expression, freedom of assembly, human dignity, non-discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, as applicable in certain domains, protection of personal data and private life, or the right to an effective judicial remedy and a fair trial, as well as consumer protection. These risks might result from flaws in the overall design of AI systems (including as regards human oversight) or from the use of data without correcting

possible bias (e.g. the system is trained using only or mainly data from men leading to suboptimal results in relation to women).

In due time the European Union's proposed artificial intelligence (AI) regulation, released on April 21, 2021. The proposal sets out a nuanced regulatory structure that bans some uses of AI, heavily regulates high-risk uses and lightly regulates less risky AI systems. The proposal would require providers and users of high-risk AI systems (including employers as well) to comply with rules on data and data governance; documentation and record-keeping; transparency and provision of information to users; human oversight; and robustness, accuracy and security. Its major innovation, telegraphed in White Paper on Artificial Intelligence (2020), is a requirement for ex-ante conformity assessments to establish that high-risk AI systems meet these requirements before they can be offered on the market or put into service. An additional important innovation is a mandate for a postmarket monitoring system to detect problems in use and to mitigate them. Despite these innovations and a sound risk-based structure, the regulation appears to have some surprising gaps and omissions. It lacks a focus on those affected by AI systems, apparently missing any general requirement to inform people who are subjected to algorithmic assessments. Little attention is paid to algorithmic fairness in the text of the regulation as opposed to its accompanying recitals. And the newly required conformity assessments turn out to be merely internal processes, not documents that could be reviewed by the public or a regulator.

The proposed Regulation fails to address the specificity of AI uses in employment, including platform work. Workers are in a subordinate position in relation to their employers, and in the EU's eagerness to win the AI race, their rights may be overlooked. This is why a protective and enforceable legal framework must be developed, with the participation of social partners.

The final version of AI Regulation shall need to balance considerations of the benefits of AI to European workers and the economy with concerns on the potential widening skills gap and social inequalities. Conversely, these changes also raise legitimate concerns about potential job losses and the need to help upskill and reskill workers in the sectors which will face the most significant disruption.

The conference presentation will focus on the proposed AI Regulation and what it means for the world of work. The proposed measures are tantamount to a constitutional process with the po-

tential to influence EU citizens' lives for the next 50 years, and even though labour related topics are in the high-risk category in the proposal, this does not provide sufficiently adequate safeguards, as much of the control is based on self-assessment. Surveillance at work, such as monitoring keystrokes and browsing activity, cameras and GPS, and biased AI-based recruiting systems are especially concerning.

I will express concerns about the tracking of emotions of workers, which has no scientific basis, and the approach taken in the AI Regulation only to require people to be informed of this. I will also raise concerns over the legal basis of the act which is based on liberalisation and does not take the European Social Charter sufficiently into account.

Due to the limited time-frame some of the following questions will be highlighted: 1. How can AI be regulated to be true to the EU's core values (variety of human rights issue). 2. How the labour market can adapt to rapidly progressing digitalisation and increasing use of AI (EU flexicurity issue: ALMPs, LLL+digital gap). 3. How to respond to the challenges of loss of jobs arising from automation as well as the emergence of new jobs requiring new skillsets (two approaches of right to work). 4. How AI will change the workplace and the future of work and how to prepare for it (right to OHS). 5. How can policy- and lawmakers ensure AI implementation in the workplace is ethical and fair. 6. Is there scope for a digital social contract to ensure an inclusive future of work?

Keywords: AI; Human Rights; EU AI Regulation Draft; Algorithmic Categorisation of Risks; White Paper on Artificial Intelligence; Labour Market; Job Security; Digital Gap of Employees; Digital Social Contract.

UDK: 004.738.5:366.5

*István Harkai**

THE REVOLUTION OF TECH GIANTS AND THE CONSUMER SOVEREIGNTY

The advent of the Internet brought the age of platforms. Information and content disseminated over the Internet are dominated by websites that business modells are specialised in making available a significant amount of user-generated content or content created by others but uploaded by users. The potential copyright liability of streaming providers, social media platforms, online marketplaces, websites offering open source software or open-access content, online encyclopaedias has become a major issue in legal literature and practice. User expectations towards these platforms have also changed significantly. Users wish to gain full control over the digital content made available to them, but in practice, the control that they can enjoy over the digital contents is limited to an access right defined by the contractual terms and private ordering mechanisms of the platform providers.

Following the development of the concept of the Digital Single Market, it has become urgent to renew the harmonisation of copyright law. A key element of this reform is the CDSM Directive, which has sought, among other things, to clarify the behaviour of content-sharing service providers within the conceptual framework of copyright. The new rules have created new challenges. The Court of Justice of the European Union (CJEU) has a long history of jurisprudence on the liability of content sharing service providers (platforms).

CDSM Directive defines online content sharing services as copyright users of non-commercial (user-generated) content uploaded by end-users. The underlying (argumentative rather than legal) basis for this classification was the theory of the „value gap“

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or „transfer of value“ as developed by the music rights lobby, i.e. the difference between the revenues generated by content sharing services and the amount of royalties paid to music rights holders, which is not exactly favourable to the rights holders. It follows from the new rules that the legal operation of the service providers is conditional on prior authorisation of the uses (either through collective rights management or individual licensing, depending on the specific content protected). However, such authorisation is almost impossible in everyday life due to the mass nature of the content uploaded to certain sites, such as YouTube or Facebook.

Meanwhile, the limitation of End-User access to content by contractual practices clearly demonstrated, in the period prior to the adoption and transposition of the CDSM Directive, that the possibilities for end-users to access content are severely limited by the contractual practices of platforms. The new liability regime of the CDSM Directive is expected to further tighten this situation, which also raises a number of fundamental rights issues.

Keywords: Platform Economy; Platform Providers; Internet Service Providers; End-Users; Private Ordering Mechanisms; Consumer Expectations.

UDK: 343:342.7(4)

*Krisztina Karsai**

EUROPEAN CRIMINAL POLICY

The purpose of the presentation is to introduce the leading features of the European criminal policy. Today, no one stands to argue that European criminal law exists, and as such, it is obvious that European criminal policy exists as well. Traditionally and within the internal framework of states, criminal policy is legal regulation forming ideology stemming from social attitudes and value systems of a society, which is the basis for and at the same time, justification of the formation of criminal law and criminal justice. In many cases, it formulates some favourable social aim and tries to achieve it through legal regulation. However, it is also true that often times criminal policy changes occur for general political support (=to gain votes), taking advantage of the sensitivity of the masses concerning punishability, punishments, sense of justice, and of course fear. Furthermore, criminal policy is one of the tools for social control of crime, therefore, it should be viewed as an activity of the state that reacts to this social phenomenon. The main feature of European criminal policy, which is very different and distinct from national criminal policies, is that it is not really sensitive to political influences in the Member States, whereas national criminal policy cannot exist without political influence.

Criminal policy, considered the tool of state crime control most certainly cannot be applied to the European Union arena without some restrictions. It does however suffice as a starting point, and therefore it can be stated EU criminal policy has become a tool for controlling crime, namely through the fact that its carrier and representative is such an entity that is capable of influencing criminal law and legal regulation concerning criminal

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justice at both member state level and in a narrower sense “supranationally” (European Public Prosecutor, EPPO, as well as establishing legislation at the level of EU regulations). Traditionally criminal justice is ‘detained’ in the glass cell of sovereignty, it means that neither the exercising state power outside of the national territory nor the acceptance of foreign state power at the own territory are options for authorities in criminal matters not even for accelerating procedures or enhancing effectivity of investigations or judicial procedures. The integration within the EU has changed the landscape in this regard and introduced the concept of European territoriality also in criminal matters which is a leading principle of current and future legislative ideas on the EU level. European criminal policy has not made the unification of laws a top priority, but nonetheless it is obvious that the most effective form of the approximation of laws is by all means unification. Furthermore, The EU receives serious criticism for its criminal policy, expressing that over the past twenty years, the EU has been exercising its criminalisation powers very actively. It is a question of fact that with the establishment of the third pillar, but especially following the amendment of the Treaty of Amsterdam, EU-level legislation that would affect criminal law systems began. Karsai will present a brief history of European criminal policy, its origins, its current actors and its further attributes, which are based on the principle of European territoriality, mutual trust, the functionality of EU law and the protection of human rights in the EU. The presentation also adresses the implications of these main attributes for current EU public policy and legislative trends, and the author makes predictions for the future of European criminal policy based on his analysis.

Keywords: European Criminal Policy; Criminal Law; European Territoriality; Mutual Trust; Human Rights.

UDK: 17:347.441.4

*Michael Kayser**

BUSINESS ETHICS AND COMPLIANCE – DOES ONE WORK WITHOUT THE OTHER

Organisations face an increasing amount of regulation, both nationally and internationally, which steadily increases the complexity and requirements for compliance management and compliance itself. At the same time, organisations face contextual changes that require them to consider and include wider stakeholder groups that bring with them additional sets of expectations, needs and demands.

At the same time that a more diverse set of stakeholder groups contribute additional expectations, those of traditional stakeholders such as investors, shareholders or employees are changing, too, driven by societal, technological and environmental developments.

Regulators respond to these contextual changes with updated and new regulation. While these regulations impact organisations to the extent of related compliance requirements, the question remains whether adjusting to changes in the regulatory environment is sufficient for organisations to continue to be successful going forward.

Are there not additional aspects, expecting organisations to be increasingly responsible, trustworthy and accountable for their actions? Compliance is generally understood to mean "following the rules". Business ethics can be understood to mean "doing the right thing". Combining both, one should be "doing the right thing, the right way". The latter is what stakeholders more and more expect from organisations and their behaviour.

Is this conclusion inevitable though and does it lead to superior results? Does business ethics imply compliance? Does compli-

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ant behaviour of an organisation require ethical principles, values or beliefs?

Starting with compliance, one can establish that there are mandatory rules, such as regulations, and legal or statutory provisions. On the other hand, there are voluntary commitments such as standards, industry codes or practices that an organisation adopts or establishes. Compliance can then be defined as adhering to those voluntary and mandatory provisions or rules.

Acknowledging (not necessarily accepting or agreeing with) the mandatory rules and the commitment to these rules and regulations allows organisations being participants in certain markets, environments, societies, etc., providing access to fair markets or level playing fields, through formal licence to operate.

The values of an organisations, its principles and behaviour, determine not only how mandatory regulatory frameworks are treated and obeyed but also the voluntary, additional standards and rules it submits itself to as well as its behaviour within the environments it operates in. Business ethics, the organisational values and principles, one can say, determine the standards beyond the legally required level.

Increasingly, formal licenses to operate are the minimum, basic requirement to be fulfilled with a societal license to operate becoming more and more important. This societal license to operate has to be earned by every organisation constantly by establishing, amongst other elements, a purpose that is in line with stakeholder benefits on the one hand and demonstrating value and principled behaviour achieving this purpose on the other.

It follows that increasingly, compliance will not be sufficient if organisations want to be successful in the long run, but that compliance is merely a hygiene factor and an organisation's purpose, its principles, values and behaviours will be decisive factors going forward.

Keywords: Governance; Compliance; Purpose; Business Ethics.

UDK: 341.3:341.67:341.211

*Eckart Klein**

HOW CAN PUBLIC INTERNATIONAL LAW CONTRIBUTE TO THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Public international law had always to deal with the issues of peace and war. This is true until today, although war has been internationally outlawed as a legal means of politics. State sovereignty has been legally tamed, not least by the recognition of human rights, since peace is the only firm basis for their enjoyment. In spite of this, two world wars could not be prevented, and annually numerous military conflicts break out or continue.

This situation raises questions. First, we have to ask whether the current legal rules on the prohibition of war are sufficiently stringent and suitable. True, they even have the nature of peremptory norms (jus cogens), but interpretive problems remain. E.g., self-defence of a State against the military attack of another State is permitted, but when does an attack begin? Are preventive counter-attacks legal? How is an attack by non-State actors to be assessed? Are so-called military humanitarian interventions permissible? How to react to cyber attacks if the attacker cannot be clearly identified?

A second question concerns the institutions and entities established by international law in charge of resolving conflicts peacefully. In this respect particularly international courts and quasi-judicial bodies have to be mentioned. They can offer a solution of the dispute on the basis of an independent and impartial procedure. However, because of the still predominant sovereignty of States, no State has to acknowledge the jurisdiction of an international court, tribunal or of another body. Even if a State has

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recognized such a jurisdiction, it is nearly impossible to enforce compliance with the judgment.

Because of the diverging interests of the States it will never be possible to avoid disputes as such, but there are many international instruments at hand to prevent the outbreak of military conflicts. Diplomatic means include the assistance of third States or international organisations, particularly the UN. At the end of the day, however, the principle of sovereignty and, as we have recently seen, naked military power reigns again.

Although during the last hundred years, at least since 1945, international law has matured and much accomplished, it still suffers from serious deficiencies evidently connected with the principle of State sovereignty. Could we think of a more perfect world? There are many conceptions of a new world order. Some include the perception of a hegemon, a dominant State that may form the world according to its own ideas. Or one could think of a World State, founded with the consent of all States which afterwards would perish or become mere parts of this State. Yet we should have in mind the intensity of power that had to be vested in a World State and the consequences for the individuals. Perhaps the better alternative would still be to continue the long march searching for results by multilateral cooperation, respect of human rights and resolute opposition against any disregard of the rule of law and the rising number of authoritarian regimes and dictatorships.

Keywords: Peace and War; Sovereignty of States; United Nations; Human Rights; Peaceful Solution of Conflicts; New World Order.

UDK: 341.67:347.91/.95

*Marko S. Knežević**

DURCHBRECHUNG DER RECHTSKRAFT IM SERBISCHEN ZIVILPROZESS: RECHTSFRIEDEN IN GEFAHR?

Obgleich strittig ist, ob der Rechtsfrieden als solcher der Zweck des Zivilverfahrens ist, es ist unbestritten, dass der durch Rechtskraft gewehrleistete Rechtsfrieden unabdingbar für die Rechtsstaatlichkeit des Verfahrens ist. Rechtskräftiges Urteil muss also grundsätzlich bestehen bleiben, auch wenn es eigentlich sachlich unrichtig ist. Daher bedarf die Rechtskraftdurchbrechung einer besonderen Rechtfertigung: Nur dann, wenn der Fortbestand eines mit schwerwiegenden Fehlern behafteten rechtskräftigen Urteils ein größeres Übel für die Rechtsordnung wäre als die Gefährdung des Rechtsfriedens und der Rechtssicherheit, sollte es dazu kommen. Nach dem deutsch-österreichischen Verfahrensmodell, das Jahrzehnten ein konzeptionelles Vorbild des jugoslawischen Rechts war, sind diese Wertungen in den Figuren der Nichtigkeits- und Restitutionsklage verkörpert. Kennzeichnend für beide Rechtsbehelfe ist, dass die Rechtsanwendungsfehler keine Gründe für Rechtskraftdurchbrechung sind; dazu sind Rechtsmittel (Berufung, Revision) geeinigt, die eben rechtskrafthemmend wirken.

Im jugoslawischen Recht Zäsur brachte ZPO-Reform in 1976, indem das dreistufige Verfahrensmodell durch ein zweistufiges ersetzt wurde: Nur die Berufung hatte aufschiebende Wirkung, während die Revision zur sogenannten außerordentlicher Rechtsbehelf wurde – ein Rechtsbehelf, wie der Antrag auf Wiederaufnahme des Verfahrens, der dazu bestimmt war, die Rechtskraft durchzubrechen. Die Revision wurde also umgestaltet, aber die Revisionsgründe blieben traditionell: Revisionsgericht prüfte die

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sachliche Richtigkeit des Urteils im Hinblick auf die richtige Rechtsanwendung. Der serbische Gesetzgeber übernahm dieses Modell ebenso wie seine postjugoslawischen Pendants ohne weiteres Nachdenken. Die heutige Überarbeitung des serbischen Rechts hat jedoch eine weitere Transformation erfahren. Der Zugang zur obersten Instanz scheint nie größer gewesen zu sein. Das serbische Revisionsrecht kennt nämlich fast alle denkbaren Zulässigkeitsfilter: Es gibt Streitigkeiten, in denen Revision uneingeschränkt zulässig ist (kausale Revision); es gibt sowohl eine Difformrevision (gegen abänderndes Berufungsurteil) als auch eine Wertrevision (Revisionssumme: 40.000 Euro, bzw. 100.000 Euro in Handelsstreitigkeiten); wenn es auch unter diesen Voraussetzungen Revision unzulässig ist, dann gibt es eine Zulassungsrevision. Insofern ist das Durchbrechen der Rechtskraft heute keine Ausnahme, kein Trauma, sondern Alltag.

Der Paradigmenwechsel der Rechtskraft ist jedoch, abgesehen von den am Rande verbliebenen einsamen Haltungen in der Literatur, in der Lehre nicht registriert worden. Nach wie vor werden dem deutsch-österreichischen Modell angemessene Vorstellungen verwendet: Um des Rechtsfriedens und der Rechtssicherheit willen müsse ein Streit ein Ende haben und dafür sorge die Rechtskraft; es könne jedoch durchgebrochen werden und dafür gebe es spezielle Rechtsbehelfe. Kann man aber noch von durch die Rechtskraft geschaffene Rechtsfrieden und Rechtssicherheit sprechen, wenn in vielen Fällen jeder Rechtsanwendungsfehler zu ihrer Zerstörung führt? Revisionsgründe sind grundsätzlich nicht von solchem Gewicht, dass sie eine Rechtskraftdurchbrechung rechtfertigen. Zudem, ist ein Streit wirklich beendet, wenn ja der Streitgegenstand, der zwar rechtskräftig entschieden ist, in eine „nächste“ Instanz angefallen ist? Der Rechtsfrieden im serbischen Recht ist daher gefährdet wie nie zuvor. Rechtskraft ist mehr ein technischer Begriff als ein Ergebnis der Bewertung geworden. Der Systemfehler des historischen Gesetzgebers belastet noch immer der serbische Zivilprozess.

Die Ursache für den Systemfehler könnte man aber in ein dogmatisches Missverständnis suchen, der auf den historischen Gesetzgeber und damalige Lehre zurückgeht. Es scheint, dass das einzige Argument für den Paradigmenwechsel die Notwendigkeit der Rechtsschutzbeschleunigung war: Bereits das Ergebnis des zweitinstanzlichen Verfahrens sei für den „Gewinner“ ein hinreichender Grund, sein Recht verwirklichen zu dürfen. Es ist unschwer zu erkennen, dass man Rechtskraft und Vollstreckbarkeit identifizierte, indem eher ein Dogma von Rechtskraft als notwen-

dige Voraussetzung der Vollstreckbarkeit herausgearbeitet wurde. Anstatt die vorläufige Vollstreckbarkeit des zweitinstanzlichen Urteils nach deutschem Vorbild einzuführen, wurde die Rechtskraft zum Opfer gefallen, mithin Rechtsfrieden.

Schlüsselwörter: Rechtsfrieden; Rechtskraft; Zivilprozess; Revision.

UDK: 341.3:342.724(4)

*Carolin Laue**

FRIEDEN DURCH DEN SCHUTZ VON MINDERHEITEN IM EUROPÄISCHEN MIGRATIONSRECHT

Der Schutz von Minderheiten wird effektuiert durch die verschiedenen multilateralen, parallel bestehenden Instrumente des Völkerrechts, des Konventionsrechts der Vertragsstaaten des Europarats, des Unionsrechts und des nationalen Rechts - hier vornehmlich durch Berufung auf das deutsche Diskriminierungsverbot - sowie der Judikatur des Europäischen Gerichtshofs für Menschenrechte, des Gerichtshofs der Europäischen Union und der jeweiligen Verfassungs- und Verwaltungsgerichte. Individualrechtlich wurzelt der Minderheitenschutz in der Menschenwürde und kollektivrechtlich im Selbstbestimmungsrecht der Völker.

Während das UN-Völkerrecht den bislang einzigen universellen Schutz von Minderheiten unter Zugrundelegung eines extensiven Minderheitenverständnisses formuliert, dabei aber auf eine Definition des Minderheitenbegriffs selbst verzichtet, gehen die Übereinkünfte des Europarats und der Europäischen Union sowie das nationale (hier deutsche) Recht nach wie vor von einem engen Minderheitenbegriff aus. Angehörige einer Minderheit sind demnach Personen, die Staatsangehörige eines Mitgliedstaats der Europäischen Menschenrechtskonvention oder der Europäischen Union sind, die gemeinsame ethnische, kulturelle, religiöse oder sprachliche Merkmale aufweisen, über eine eigene kulturelle Identität verfügen und diese erhalten wollen, mit ihrem Staat seit langem bestehende, feste und weiter andauernde Bindungen unterhalten oder im Staatsgebiet traditionell in der Folge vieler Genera-

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tionen ansässig sind und sich im Verhältnis zur Gesamtbevölkerung in der Minderheit befinden.

Je weiter der Minderheitenbegriff verstanden wird, desto restriktiver wird der Minderheitenschutz gehandhabt (letztlich dann nur im Rahmen des Diskriminierungsverbots), während die Folge eines engeren Minderheitenbegriffs ein weitergehender Minderheitenschutz sein muss.

Den Schutz der Identität als wesentliches Element gilt es bei der Integration zu wahren, bei Assimilierungsdruck oder gar Zwangsassimilation wird die Identität als minderheitsstiftendes Merkmal verletzt. Unter die Definition des Völkermords fällt schließlich, wenn jemand in der Absicht, eine nationale, rassische, religiöse oder ethnische Gruppe als solche ganz oder teilweise zu zerstören, die Gruppe unter Lebensbedingungen stellt, die geeignet sind, ihre körperliche Zerstörung ganz oder teilweise herbeizuführen.

Mit Blick auf die gegenwärtigen Migrationsströme besteht nach überwiegender Auffassung kein Gebot zur Gleichbehandlung von Immigranten einerseits und autochthonen, die Staatsangehörigkeit besitzenden Minderheiten andererseits. Der originäre Minderheitenschutz und das Migrationsrecht scheinen nur auf den ersten Blick Schnittmengen aufzuweisen. Obgleich das Migrationsrecht auch schutzgewährende Funktion haben kann (etwa bei der Zuerkennung der Flüchtlingseigenschaft in den Fällen gruppenspezifischer Verfolgung), ist das Migrationsrecht viel mehr von Integration geprägt. Das kann mit dem Minderheitenschutz konfligieren. Denn allzu hohe Integrationsanforderungen an Immigranten begegnen insoweit Bedenken, als sie auf einen sich noch entwickelnden Minderheitenstatus verhindernd wirken können. Gleichwohl erscheint eine gesonderte Minderheitenklausel für neue Minderheitengruppen nicht erforderlich. Sowohl Minderheitenschutz als auch das Migrationsrecht begründen Partizipationsrechte.

Perspektivwechsel: Einen in Zielsetzung, Verfahrensweise und Rechtsgrundlage völlig anders gelagerten aber wesentlichen Pfeiler im System des europäischen Minderheitenschutzes bildet das Asyl- und Flüchtlingsrecht. Den Angehörigen einer verfolgten sozialen Gruppe kann die Flüchtlingseigenschaft zuerkannt werden. Dieser auf das deutsche Asylgesetz gestützte gruppenspezifische Minderheitenschutz, der auf die Genfer Flüchtlingskonvention zurückreicht, wird von der EU-Anerkennungsrichtlinie

und EU-Verfahrensrichtlinie maßgeblich unionsrechtlich determiniert.

Der Schutz von Minderheiten hat friedenserhaltende Wirkung. Innerstaatlicher Frieden lässt sich durch minderheitsschützende Maßnahmen eher erreichen als durch Assimilierungsdruck. Das Selbstbestimmungsrecht der Minderheit und die Loyalitätsforderung der Mehrheit an die Minderheit müssen dabei ausbalanciert werden. Sezessionsbestrebungen kann durch Autonomieregelungen entgegengewirkt werden. Die Verweigerung des Minderheitenschutzes kann schließlich zur Vernichtung der kulturellen Identität („Ethnozid“) führen.

Schlüsselworter: Minderheitenschutz; Identität; gruppenspezifische Verfolgung; Staatsangehörigkeit; Migration.

UDK: 331.31:004

*Adrienn Lukács**

WORK-LIFE BALANCE AND THE EMPLOYEES' RIGHT TO DISCONNECT

Digitalisation have fundamentally shaped the world of work: it has brought more flexible and more efficient measures for both the employer and the employees. Now, employees performing clerical work can work at anytime and anywhere, which can serve as a means to achieve better work-life balance, through allowing the employees more flexibility regarding the organization of their professional and personal life. However, digitalisation also gave rise to a number of ethical, legal and employment related challenges, such as intensifying workload or extended working hours. Digital tools brought new working patterns and constant connectivity: it made possible – and often an expectation – for employees to check their e-mails, phone calls, instant messages, etc. – even when they are spending their non-working time.

However, such a constant on-call culture has a number of consequences on employees. Notably, it results in blurring the boundaries between work and personal life, having detrimental effects on work-life balance. Even though it does not seem possible to perfectly and strictly separate professional and personal life, being always in a stand-by mode is an unproportionate intrusion into the employees' personal lives. In addition, rest is essential to employees' well-being and health: an always-on connectivity can lead to stress and pressure, and have detrimental effects regarding employees' physical and mental health. The widespread use of digital tools for work purposes combined with atypical forms of employment relationship – notably telework – increased due to the COVID-19 pandemic, making it even more urgent to ensure the

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separation of work and professional life and to regulate employees' right to disconnect.

Recognizing these challenges, in January 2021 the European Parliament issued a resolution drawing attention to the importance of the right to disconnect and urging the EU Commission to adopt the necessary legislation in order to ensure the employees' right to disconnect throughout the EU. The Parliament acknowledged that interruptions to non-working time and the extension of working hours can lead to – amongst others – unremunerated overtime, or can exercise a negative impact on employees' health or on work-life balance. The Parliament called for an act ensuring that employees should not be required to engage in work-related activities outside of working hours, including communication: they should neither be contacted by colleagues or superiors for the purposes of work. The right to disconnect should enable employees to switch off work-related tools (e. g. computer, cellphone, etc.) without facing adverse consequences.

The presentation aims to examine the effects on digitalisation regarding employees' rights and more precisely regarding their work-life balance, as well as the significance of the right to disconnect. It will explore the current state of the right to disconnect, the arising legal challenges and the possible solutions given to them.

Keywords: Working Time; Right to Disconnect; Work-life Balance; Digitalisation.

UDK: 347.78:342.7

*Péter Mezei**

FROM "COPYRIGHT WARS" TO "COPYRIGHT PEACE"

In 2012, in a comprehensive monograph on the proliferation of P2P (peer-to-peer) file-sharing I discussed how file-sharing could effectively be tackled.** My hopes turned out to be naïve as online piratical activities are eliminated at all. Both foreseeable and unexpected developments have contributed to the persistence of "copyright wars", and have ruined the probability of any "copyright peace".

In my book, I first urged the importance of strengthening copyright literacy, and thus social responsibility. Both informing the society on the importance and benefits of copyright law, and on the possible negative effects of piratical activities on the creation of culturally valuable works looked crucial. The less you invest (both financially and intellectually) into informing and educating end-users and content providers on the fairness of copyright law, the greater losses you might have. Nonetheless, only a handful of private and governmental programs have since then tried to raise awareness in this field.

Second, I stressed the need for effective but balanced enforcement of copyrights to repress users and unauthorized content providers from copyright infringements. The history of P2P file-sharing has shown that any fight against content providers/system operators is a stalemate. This is partially due to the different legal standards of direct and indirect copyright liability in various jurisdictions, as well as the territorially limited nature of copyright

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** *Mezei Péter*, A fájlcsere dilemma – A perek lassúak, az internet gyors, (2012), 248-269.

law in general. Similarly, any systematic fight against end-users is a wrong track. These procedures are not only expensive and contra productive by harming rights-holders' reputation, but their effectiveness is questionable. Similarly, the preliminary rulings of the Court of Justice of the European Union on the (non-)disclosure of personal data of users of illegal online services have shown the strength of the European data protection rules. Due to the ineffective fight against content providers and end-users, copyright holders gradually focused on the responsibility/liability of internet gatekeepers: the internet access/service providers.

Third, the introduction of new business models by or under the authorization of copyright holders seemed to be inevitable to drive back end users to the white zone, and convince them to pay for the consumption of cultural goods. At the same time, in order to effectively compete with illegal services, these new models had to be affordable (cheap or free of charge), safe (no security threats) and DRM-free services of easy access and use, as well as with a diverse repertoire (in audiovisual sector with various language options).

This presentation intends to compile the most important experiences related to the high hopes of combating P2P file-sharing. These include, but are not limited to the spread of streaming services and the collateral damages it has caused (which we also tend to coin as "streaming wars"); the conflict of e-commerce safe harbors and copyright liability of online content sharing service providers related to the end-users' illicit activities; the rapid development of "privatized law enforcement"; and the growing fears of "filtering wars" (that is, platforms' voluntary or obligatory content filtering mechanisms). The presentation focuses on the legal development in the European Union, but its findings are equally important for non-member countries as well. And the gloomy conclusion of the presentation cannot be else than the expression of concerns that we might be farer from "copyright peace" than expected 10 years ago.

Keywords: File-sharing; Copyright; Social Responsibility.

UDK: 343.222

*Erzsébet Molnár**

DIE NEUE FUNKTION DER LEHRE DER OBJEKTIVEN ZURECHNUNG IM MODERNEN MATERIELLEN STRAFRECHT

Die Doktrin der objektiven Zurechnung ist eine Theorie, die typisch im Bereich der Kausalität diskutiert wird. In der Literatur sind zwei Interpretationen der Theorie bekannt. Eine Auslegung befasst sich neben der Feststellung eines Kausalzusammenhangs zwischen dem Verhalten und dem Ergebnis mit der Frage, ob das kausale Ergebnis dem Täter zuzurechnen ist. In diesem Sinne erscheint die Lehre von der objektiven Zurechnung im allgemeinen Teil des Strafrechts als eine Theorie, die die Verantwortlichkeit ausschließt, da sie besagt, dass trotz des Vorhandenseins eines Kausalzusammenhangs, auf den sich die Zurechnung des Ergebnisses stützt, die Verantwortlichkeit objektiv nicht festgestellt werden kann und das Ergebnis nicht zugerechnet werden kann. Die verantwortungsausschließende Auslegung der Lehre der objektiven Zurechnung ist typisch für den Bereich des Verkehrsstrafrechts anwendbar ist, und mit dem Grundsatz der Schuldhaftigkeit voll vereinbar. So kann im Bereich des Verkehrsstrafrechts eine Verletzungserfolg, die kausal im Zusammenhang mit einem Regelverstoß als Tatverhalten eintritt, dem Täter nicht zugerechnet werden, wenn die Folge objektiv unvermeidbar war, d.h. wenn sie auch bei regelkonformem Verhalten eingetreten wäre.

Die Herausforderungen der technologischen Entwicklung stellen auch die Rechtswissenschaft vor eine Reihe von Aufgaben im Bereich der Strafrechtsdogmatik. Im Strafrecht dominiert heutzutage zunehmend der Risikoansatz, der besagt, dass derjenige, der eine gefährliche Situation schafft, die Gefahrenquelle be-

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herrschen muss und, wenn sich die Gefahr schließlich in einem Schaden manifestiert, verantwortlich gemacht werden muss. Diese Risikobetrachtung wirft eine Reihe von Fragen auf, die in Zukunft durch eine andere Auslegung der Lehre von der objektiven Zurechnung beantwortet werden könnten, die eine Grundlage für die Zurechnung bieten würde.

Es stellt sich die Frage, wer und wie im Falle eines Unfalls, der durch ein selbstfahrendes Auto verursacht wird, sanktioniert wird. Wenn die Haftung des Fahrers des Fahrzeugs nicht auf der Grundlage der Kausalitätslehre festgestellt werden kann, kann dann entschieden werden, dass der Hersteller des Fahrzeugs als Verursacher der Gefahr derjenige ist, dem das Ergebnis zugerechnet wird? Oder kann die Haftung des Hosting-Anbieters für ein Verhalten festgestellt werden, das von einem anderen begangen wurde, ohne dass ein Kausalzusammenhang besteht, und für das der Hosting-Anbieter die Plattform genutzt hat, um dieses Verhalten zu begehen? Kann die von einer anderen Person begangene Straftat der Person zugerechnet werden, die verpflichtet gewesen wäre, das Verhalten des Täters zu überwachen und zu kontrollieren?

Schließlich wird in der Vorlesung die Frage behandelt, ob unbewusste Fahrlässigkeit eine Form der Schuld ist oder ob sie dogmatisch als eine Zurechnungsnorm zu betrachten ist.

Schlüsselwörter: Zurechnung; Schuldprinzip; Kausalität; Risikozusammenhang; Herausforderungen.

UDK: 342.77:342.7:614.4

*Slobodan P. Orlović**

CONSTITUTIONAL PROVISIONS OF THE STATE OF EMERGENCY

The Constitution of Serbia regulates, primarily and in detail, special states of emergency – which can be declared on the entire state's territory or in its part – in a total of three extensive articles of the Constitution: state of emergency (art. 200), state of war (art. 201) and, the last one, derogations from human and minority rights in a state of emergency and war (art. 202). The constitutional provisions of the state of emergency became especially relevant when the state of emergency lasted for almost two months, during the COVID-19 pandemic (March 15 - May 6, 2020).

A state of emergency is declared if the competent authority assesses that a public danger threatens the survival of the State or its citizens. The danger must pose a threat to the public good or public interests, not private or individual interests. The public danger must be of such large scale that it threatens the survival of the State and its citizens.

The Constitution regulates several issues related to the state of emergency: when a state of emergency can be declared, which authority has the right to declare state of emergency, how long a state of emergency can last, what measures can be prescribed during a state of emergency, which alternative entity is authorized to declare a state of emergency and to prescribe measures if the National Assembly cannot convene, what is the legal status of the decision of declaration of a state of emergency and measures to be taken during its duration, what are the limitations to derogate human and minority rights in the period of the state of emergency, which rights are absolutely protected during the state of emergency (absolute rights).

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Some issues related to the state of emergency need to be prescribed by statute because they are not contained in the Constitution (for example, who proposes the proclamation of a state of emergency). The Republic of Serbia has no law in place governing the state of emergency; it is regulated only by the Constitution. There is also no law on the state of war except the Defense Act, which governs the legal regime in wartime and some issues concerning the state of emergency. Perhaps this lack is the reason why, during the state of emergency declared in 2020, the functioning of the state was not in the full capacity of the rule of law. During that period, law-breaking took place and human rights were violated by public authorities. For example, during that period the legal system was subject to changes and human rights to restrictions, not only by governmental decrees having the force of laws but also by bylaws enacted by ministers and other office holders. The Constitutional Court received many initiatives to review the constitutionality and legality of specific acts (decisions, orders and rules).

Keywords: Constitution; State of Emergency; Human Rights; Pandemic.

UDK: 341.67:355.1

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PEACE, PRIVATE MILITARY COMPANIES AND LAW – CHALLENGES AND PROBLEMS

From the very beginning of humanity, peace has been one of the most esteemed values that enable society, states and individuals to survive, develop and prosper. As such, it is present and preserved even today, both nationally and internationally. This is completely understandable, considering that the opposite of peace is war, or any type of armed conflict (domestic or international) that brings with it suffering, material and human losses, poverty and so forth. Unfortunately, war and other types of armed conflict are not uncommon in modern societies.

Historically, private military companies (PMC) have their roots in the phenomenon of mercenaries, whose engagement, unlike PMC, is regulated by international law. The rapid development of PMC to provide military and other security services followed, especially after the end of the Cold War. During the Cold War, PMC played a significant role in leading the low-intensity conflict in which two opposing blocs clashed in third-country territories. After the end of the Cold War, the great powers began to carry out radical reforms of their armed forces in order to reduce their number, and increase the technical equipment and ability to respond more quickly to modern challenges, risks and threats. At that time, there was a noticeable trend of the transfer of surplus members of the armed forces to the private sector. After September 11, 2001, PMC began to play a significant role in the global „war on terrorism".

PMC can in principle be defined as business organizations that provide users of their services, with certain (primarily) financial compensation, a wide range of military (and security) servic-

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es. We primarily mean providing services through: direct participation in military, armed conflicts, but also services such as training of military and police forces of the state that hires them, advisory services, logistical support services, securing critical infrastructure, intelligence collection, etc. As private companies, they are subject to certain legal norms of the state in which they are established. Most PMC today have their headquarters in the United States, Great Britain, France and Israel, which are also the countries that use their services the most. However, the users of their services today are, in addition to countries, certain international organizations such as the United Nations, the European Union, NATO, but also multinational companies, as well as certain international non-governmental organizations. Unfortunately, in practice, there have been cases of their engagement by certain rebel groups, liberation movements and drug cartels. In terms of the size of these companies, there is great diversity today, so there are those that number up to several dozen, all the way up to those with several hundred or even thousands of members.

Certain experiences and examples from practice regarding the activities of some PMC in the previous period indicate certain controversies in their work. Of course, the most significant are those in cases where excessive or unjustified use of force by their staff has violated the human rights and freedoms of citizens. The cases in which a large number of civilian victims took place attracted public attention. This additionally raised certain security, ethical and legal issues in scientific and professional circles, but also in the general public. Numerous critics of PMC have questioned the justification for the existence and engagement of these entities in armed conflicts, and their „contribution“ to peace in certain regions.

In addition to the above, one of the main challenges and problems today when it comes to PMC is the different legal regimes of the countries in which these companies are established, as well as those in which they operate in. Also, there is the absence of a generally accepted international convention that would regulate all key issues of existence, activities and control of these companies during their engagement especially in armed conflicts. Some of the basic questions that should be answered by this convention are: situations and conditions in which they can or cannot be engaged, the legal status of its members in certain situations in which they are engaged, who and under what conditions can and who cannot be a beneficiary of their services, who and in what way controls their work, the responsibility of the home country as

well as the user of services for their actions, etc. If we accept the fact that PMC are a reality today, the generally accepted international legal framework that would regulate these and other issues of importance for their actions in armed conflicts may be an instrument that will justify it to some extent.

Keywords: Peace; Security; Private Security; Private Military Companies; International Law.

UDK: 341.645.5:341.67

*Branislav R. Ristivojević**

RECONCILIATION DESPITE JUSTICE: THE NOTION OF PEACE IN THE WORK OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

After almost a quarter of a century of the work of the International Criminal Tribunal for the Former Yugoslavia, it is time to settle the record straight regarding its operations. It is generally known that the main reason of its foundation and the main purpose of its operations given in the United Nations Security Council Resolution 827 is the establishment and maintenance of peace in the former Yugoslavia. Therefore, the analysis of the notion of peace in the 25 years of operations of this judicial institution is undoubtedly the adequate manner to provide an estimate on whether it has managed to achieve the task set before it.

The first option to provide the answer to the asked question is to analyse the notion of peace, primarily through indictments and verdicts, since that these are the two most important types of acts identified in the work of an extraordinary judicial body. The summary of these acts leads to the conclusion that the notion of peace is completely neglected and marginalized in them. It is present in verdicts of only 13 out of 70 cases that appeared before the Tribunal, but it is absent in all indictments. Thus, it should not come as a surprise that in these 13 cases, it is reduced to a simple mitigating circumstance when defining the sentence.

It is possible to begin with the assumption that the Tribunal held an attitude that its verdicts and indictments spoke for themselves and that they did not have to offer a specific explanation of the manner in which they would have achieved their primary purpose. In that case, the analysis of annual Reports and semi-annu-

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al Completion Strategy Reports should provide the equal absence of the notion of peace. However, the situation is different. The notion of peace is present in them, but it evolves as the time passes by. Its content is constantly transforming, mostly by bringing it into a functional connection with other purpose of the operations of the Tribunal, but also by the intertwining with related terms, which gradually take the role the peace had at the time of the establishment of ICTY in 1993. It can also be concluded that its significance in the work of Tribunal is constantly decreasing. For example, the final report, by which the operations of the Tribunal are concluded and which would, by common sense, provide the assessment of the success of this endeavour according to the purpose set when establishing it, does not include it at all.

It seems that the minority of the voices of reason that were, at the time of the establishment of the Tribunal, objecting, not the need to create a functional system capable of bringing those responsible for war crimes to justice, but the manner in which the Security Council had done that - were right. With the reference to chapter VII of the UN Charter, that stipulates the overtaking of forced political measures for the purpose of establishing peace, the Security Council put an impossible task before ICTY. It, by its operations, should have done something that all nations at the territory of former Yugoslavia, and all diplomates of all world powers should have barely done. They have invested final efforts of reason and will during the decade of armed confrontation, only to establish and sustain, a fragile peace, or better to say, a ceasefire. Real peace is yet to be built.

For the main premise of the establishment of the Tribunal, to achieve peace by justice, to be true, it must have been proved that the forces of injustice are at least major, if not exclusive, driving force of armed conflicts. That, however, is not true, as injustice is not the cause of a war but its result, and justice is not assumption of peace but its consequence.

This most clearly shows and proves unhidden and open renunciation of its main purpose defined by Security Council Resolution 827, which the Tribunal itself, as an institution, provided in its final Completion Strategy Report in November 2017.

Keywords: Justice; the Notion of Peace; Reconciliation.

UDK: 340.13(430)

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RECHTSKRAFT UND IHRE DURCHBRECHUNG IM DEUTSCHEN RECHT

Das deutsche Recht kennt in den unterschiedlichen Rechtsgebieten jeweils das Institut der „Rechtskraft", wobei zwischen der formellen und der sich hieraus ableitenden materiellen Rechtskraft unterschieden wird. Materielle Rechtskraft tritt nur ein, wenn keine Rechtsmittel mehr möglich sind, also das Verfahren sein endgültiges Ende gefunden hat und damit formell rechtskräftig ist. Im Zivilprozess bedeutet dies beispielsweise, dass auch keine Revision mehr möglich sein darf. Auch die Einlegung der Revision hemmt den Eintritt der Rechtskraft. Dies ist anders als im neuen serbischen Recht und gilt sowohl für den Zivilprozess (vgl. § 322 Zivilprozessordnung – ZPO) als auch für die verschiedenen öffentlich-rechtlichen Verfahrensarten (§ 121 Verwaltungsgerichtsordnung- VwGO, § 141 Sozialgerichtsordnung -SGG, § 110 Finanzgerichtsordnung – FGO). Auch im Strafrecht tritt formelle Rechtskraft ein, wenn gegen die Entscheidung keine Rechtsmittel mehr gegeben sind. Im Strafrecht ist zudem Artikel 103 Abs. 3 Grundgesetz – GG zu beachten, der bestimmt: „*Niemand darf wegen derselben Tat auf Grund der allgemeinen Strafgesetze mehrmals bestraft werden.*"

Die materielle Rechtskraft betrifft nur den in dem jeweiligen Verfahren geltend gemachten Anspruch, wie sich etwa aus § 322 ZPO ergibt: „*Urteile sind der Rechtskraft nur insoweit fähig, als* ***über den durch die Klage*** *oder durch die Widerklage* ***erhobenen Anspruch entschieden ist.***" Die Rechtskraft bezieht sich also nur auf den in dem betreffenden Verfahren geltend gemachten Anspruch, im Zivilprozess also den zwischen den Parteien des Prozesses streitigen Anspruch. Gegenstand der Rechtskraft ist auch nicht die Begründung des jeweiligen Urteils, sondern nur die

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getroffene Entscheidung als solche. Grundsätzlich tritt also Rechtskraft nur im Verhältnis der Parteien zueinander ein, nicht aber gegenüber Dritten. Eine Durchbrechung dieser Regel ist etwa für das neue Unterlassungsklagegesetz (UKlaG) gegeben, wonach ein klagebefugter Verein die Verwendung bestimmter Klauseln in Allgemeinen Geschäftsbedingungen verbieten lassen kann, was dann zur Folge hat, dass der Verwender auch im Verhältnis zu anderen Vertragspartnern diese Klausel nicht mehr gebrauchen darf. Ähnliches gilt für die sog. Musterfeststellungsklagen bestimmter Verbände nach §§ 606ff. Bürgerliches Gesetzbuch – BGB. Nach § 614 BGB bindet das rechtskräftige Musterfeststellungsurteil das zur Entscheidung eines Rechtsstreits zwischen einem in dem Verfahren angemeldeten Verbraucher und dem Beklagten berufene Gericht, „*soweit dessen Entscheidung die Feststellungsziele und den Lebenssachverhalt der Musterfeststellungsklage betrifft*."

In Verfahren zwischen anderen Beteiligten hat die von einem Gericht getroffene Entscheidung keine Rechtskraftwirkung. Jeder mit einer anderen Sache befasste Richter, aber beispielsweise auch der in einem anderen Verfahren bereits tätig gewordene Richter ist an die frühere Entscheidung nicht gebunden. Dies gilt sogar für diejenigen des obersten Zivilgerichts (BGH), aber auch für Entscheidungen der obersten Gerichte in anderen Verfahrensarten. Untergerichte sind rechtlich nicht verpflichtet, von höheren Gerichten getroffene Entscheidungen in anderen Verfahren zu beachten. Es gibt also im deutschen Recht keine Präjudizwirkung aufgrund eines von einem Gericht in anderen Verfahren erlassen Urteils. In der Praxis werden allerdings natürlich regelmäßig die von obersten Gerichten getroffenen Entscheidungen auch in anderen Verfahren berücksichtigt und weitgehend auch übernommen. Kein Gericht ist aber gezwungen, etwa solche Entscheidungen, die es selbst für falsch hält, in anderen Rechtsstreitigkeiten anzuwenden.

Auch die Prozessparteien sind dementsprechend nicht verpflichtet, sich außerhalb des durch Urteil abgeschlossenen Streitverfahrens der Rechtsauffassung des entscheidenden Gerichts zu unterwerfen. So ist es beispielsweise etwa für die Finanzverwaltung möglich, aufgrund eines sogenannten Nichtanwendungserlasses des Bundesfinanzministers eine für den Staat negative Entscheidung des Bundesfinanzhofs in anderen Steuerfällen nicht anzuwenden. Es wird dann den Steuerpflichtigen überlassen, gegebenenfalls nochmals Rechtsmittel einzulegen In, um auch in ihrem Falle die Einhaltung der höchstrichterlichen Rechtsauffassung zu erwirken.

Der Eintritt der Rechtskraft bindet in demselben Verfahren die Parteien, sie müssen sich den Folgen des Urteils unterwerfen. Er bindet aber auch das Gericht selbst, etwa im Rahmen von möglichen Folgeprozessen. Wird beispielsweise im Rahmen eines Feststellungsurteils bestätigt, dass der Beklagte für einen Schaden verantwortlich ist, kann das Gericht in einem Folgeprozess über die Festsetzung der Höhe des Schadens nicht von seinem Standpunkt abweichen. In der Praxis problematisch ist allerdings häufig die Frage, ob das Erstverfahren und das Folgeverfahren denselben Streitgegenstand betreffen.

Welchem Zweck dient nun die Beschränkung der Rechtsverfolgung aufgrund einer rechtskräftigen Entscheidung? Neben der Rechtssicherheit für die Beteiligten hat die Beschränkung der anderweitigen Rechtsverfolgung auch den Sinn, die Justiz von unnötigen Verfahren zu entlasten. Wird trotz materieller Rechtskraft ein Verfahren mit denselben Streitgegenstand erneut angestrengt, fehlt es für diesen neuen Prozess am Rechtsschutzbedürfnis, die Klage ist ohne Sachprüfung als unzulässig abzuweisen und zwar von Amts wegen.

Auch das deutsche Recht kennt Wege der Durchbrechung der Rechtskraft. Im Zivilprozess besteht beispielsweise die Möglichkeit der Wiederaufnahme des Verfahrens im Rahmen einer Nichtigkeitsklage (bei schwerwiegenden Mängeln, etwa bei nicht ordnungsgemäßer Besetzung des Gerichts), sofern dieser Mangel nicht im Rahmen des Verfahrens hätte geltend gemacht werden können (§ 579 ZPO). Daneben gibt es eine sogenannte Restitutionsklage (§ 580 ZPO), etwa dann, wenn das Urteil auf einem Meineid beruht oder wenn nachträglich Urkunden aufgefunden werden, die zu einer anderen Entscheidung geführt hätten. Trotz bereits eingetretener Rechtskraft ist eine solche Restitutionsklage auch dann möglich, wenn der Europäische Gerichtshof für Menschenrechte (EMRG) in dem angefochtenen Urteil eine Menschenrechtsverletzung gesehen hat (§ 580 Nr. 8 ZPO). Von größerer praktischer Bedeutung ist allerdings die Rechtskraftdurchbrechung dann, wenn gegen eine höchstrichterliche Entscheidung Verfassungsbeschwerde eingelegt worden ist und diese Erfolg hat. Die Einlegung der Verfassungsbeschwerde hemmt nicht die Rechtskraft, wird die Entscheidung dann aber nachträglich vom Bundesverfassungsgericht aufgrund der Verfassungsbeschwerde aufgehoben, ordnet das BVerfG die Aufhebung der getroffenen Entscheidung an (§ 95 Abs. 2 Bundesverfassungsgerichtsgesetz – BVerfGG). Hier haben wir also eine ähnliche Regelung, wie sie in der Neufassung des serbischen Rechts für die Revision enthalten ist. Die Verfassungsbeschwerde ist kein ordentliches Rechtsmittel, ihre Einlegung

führt also nicht zur Hemmung der Rechtskraft, wohl aber handelt es sich quasi um eine auflösend bedingte Rechtskraft.

Dogmatisch besonders interessant ist allerdings eine in der Rechtsprechung entwickelte Einschränkung der Rechtskraft. Rechtskräftige Urteile dürften zwar in der Mehrzahl der Fälle auch inhaltlich zutreffend, zumindest aber gut vertretbar sein. Gleichwohl gibt es aber auch „falsche“ rechtskräftige Urteile, die mit den in den Prozessordnungen gewährten Rechtsmittel oder Rechtsbehelfen nicht (mehr) angegriffen werden können. Falsche Urteile bleiben auch dann falsch, wenn sie rechtskräftig sind. Zunächst ist also niemandem verwehrt, sich darauf zu rufen, das erlassene Urteil sei falsch, er muss allerdings regelmäßig die Folgen dieses falschen Urteils hinnehmen. Insbesondere in der wissenschaftlichen Diskussion ist es nicht selten, dass Urteile, auch solche von Höchstgerichten, selbst Entscheidungen des Bundesverfassungsgerichts als unrichtig bezeichnet Dies ist kein *contempt of court*, sondern eine im Rahmen der freien Meinungsäußerung und der Wissenschaftsfreiheit zulässige Urteilskritik. In Ausnahmefällen kann es sogar einer Prozesspartei, die selbst vorwerfbar an der Herbeiführung eines Fehlurteils mitgewirkt hat, verwehrt sein, sich auf ein solches Urteil zu berufen. Wird etwa ein (formal nicht mehr anfechtbares) Urteil erschlichen oder nutzt der Gläubiger ein für ihn erkennbar falsches Urteil sittenwidrig aus, so kann der Beklagte unter Umständen die Arglisteinrede (*exceptio doli*) erheben, wenn der Kläger aus einem solchen Urteil gegen ihn vorgeht. Diese Möglichkeit war schon Anfang des letzten Jahrhunderts in der Literatur (Kohler) und folgend in der Rechtsprechung des Reichsgerichts für allerdings seltene Ausnahmefälle entwickelt worden.

Für den Bereich des Strafrechts hat es in jüngster Zeit (Inkrafttreten 30.12.2021) insoweit eine Beschränkung der Rechtskraft gegeben, als nunmehr auch unter Umständen eine Wiederaufnahme zulasten des Angeklagten bei bestimmten schweren Delikten und unter besonderen Voraussetzungen erfolgen kann (§ 362 Nr. 5 Strafprozessordnung - StPO). Diese Regelung wird jedoch vielfach als verfassungswidrig angesehen und möglicherweise demnächst noch einmal korrigiert.

Es ergibt sich daher, dass auch im deutschen Recht und zwar in allen Verfahrensarten eine Durchbrechung der Rechtskraft in unterschiedlicher Weise, wenngleich unter engen Voraussetzungen, herbeigeführt werden kann.

Schlüsselwörter: Rechtskraftdurchbrechung; Rechtsauffassung; Unterlassungsklage; Verfassungsbeschwerde; falsche Urteile.

UDK: 341.9:341.67

*Björn Steinrötter**

THE PRINCIPLE OF EQUIVALENCE OF LEGAL SYSTEMS IN PRIVATE INTERNATIONAL LAW AND ITS CONTRIBUTION TO THE FOUNDATION AND PRESERVATION OF PEACE

In contrast to Public International Law, which can provide direct and far-reaching peacekeeping, Private International Law's contributions in this regard are more indirect and more limited. Nevertheless, Private International Law also contributes to the preservation of peace.

Art. 3 of the UN Declaration on a Culture of Peace (A/RES/53/243, 6 October 1999) states, i.a., that the "fuller development of a culture of peace is integrally linked to [...] mutual respect and understanding". Mutual respect also includes the recognition of private legal systems as equivalent. Conflict of laws serves this purpose by aiming at equal treatment of natives and foreigners and thus at avoiding discrimination on the basis of cross-border implications. This approach goes back to *Friedrich Carl von Savigny* (1849) who deduced from the reciprocity in the treatment of legal relations, which he considered desirable, for the question of the law applicable to cross-border factual situations: In this respect - in contrast to the objective of substantive law - it cannot be important for the judge to apply the "best" law for the substantive decision. Rather, the decisive factor is *which legal system is most appropriate from a geographical and functional point of view*.

The equivalence and neutrality towards foreign legal systems according to *Savigny* can be found in today's Private International Laws in particular in the principle of the closest connection, according to which the legal system that is nearest to the concrete

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facts should be applicable. This principle serves as a starting point for the various connecting factors of conflict of laws, which can also be corrected in individual cases if a different legal system than the one actually invoked has an even closer connection.

However, in view of *ordre public* clauses, overriding mandatory provisions, special conflict of law rules for the protection of consumers and employees, for example, as well as the increasingly widespread possibility of choice of law, the principle of equivalence is not fully applicable in modern Private International Law.

Some even see an "erosion" of this principle, which is attributed, among other things, to the Europeanization of conflict of laws. In its development, the principles of international decision-making consistency and the neutrality of the connection were no longer necessarily used as guiding principles, but rather the promotion of the EU internal market, the increase of legal certainty and the protection of the weaker party.

The criticism is that this leads to conflicts being resolved in favour of European law, especially in relation to third countries, which would result in discrimination against third-country law.

Despite these criticisms of EU conflict of law rules, the principle of equivalence remains of paramount importance. Thus, the EU conflict of laws continues to contain neutral *loi uniforme* conflict of laws rules. Therefore, the principle of equivalence can still be found in today's Private International Law. However, there is a partial shift of the de facto recognition of the equivalence of a private law system from the legislative to the judiciary. Here, it is important not to hastily and systematically reject different legal concepts, for example, with recourse to the *ordre public* clause.

Rather, a consistent application of the functionalism principle of Private International Law is able to achieve appropriate results without implicitly classifying other legal systems systematically as inferior. Even such relatively small aspects can in the end contribute to showing respect for other states and thus be a particle for peaceful coexistence.

Keywords: Equivalence of Private Law Systems; Principle of the Closest Connection.

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*Anikó Szalai**

ARMED CONFLICTS ON THE TERRITORY OF THE FORMER YUGOSLAVIA AND THE FATE OF TREATIES

The effect of armed conflicts on treaties has not entered the focus of legal discussions for decades after World War II, but this has changed at the beginning of the 1990s - partly owing to the changed nature of armed conflicts. Dissolution of states, internal armed conflicts and internationalised civil wars resulted in questions relating to the status of treaties. These questions pertain to the effect and application of bilateral and multilateral treaties, whether they are applied, suspended or terminated by the armed conflict. The 1969 Vienna Convention on the Law of Treaties does not provide a clear answer, thus the practice of states needs to be analysed.

Keywords: Armed Conflicts; Treaties; Dissolution of States.

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*Zsolt Szomora**

CONSTITUTIONAL COMPLAINT IN CRIMINAL MATTERS – EXPERIENCES OF THE PAST DECADE IN HUNGARY

In Hungary, the so-called „real constitutional complaint" („echte Verfassungsbeschwerde" in German terms) was instituted in 2012 as the new Constitution of Hungary (named Fundamental Law) came into effect. This special legal remedy makes possible to challenge (criminal) courts' judgments upon their conformity with the Constitution. In case the application of substantive or procedural rules of criminal law embodies a violation of basic rights safeguarded by the Constitution, the Constiutional Court can quash the judgment.

This presentation delivers a review of the regulation of constitutional complaint and the practice of the Constitutional Court in criminal matters. The main issues to be addressed are as follows:

I. What can be challenged by a constitutional complaint, i.e. the types of the constitutional complaint.

The proper distinction whether the complaint challenges the constitutional conformity of the application of criminal law provisions or the constitutionality of the statutory rule itself is of high significance, also affecting the admissibility of the complaint and the possible outcomes for the concrete criminal procedure. On the other hand, it has to be pointed out why the application of procedural coercive measures (e.g. pre-trial detention) cannot be challenged by a constitutional complaint and what discrepancies occur due to this legal situation.

II. Who has the right to file a constitutional complaint in criminal matters; i.e. procedural legitimation.

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The circle of the participants of the criminal procedure who have the procedural legitimation to file a constitutional complaint needs to be determined. Besides the defendant, are there other participants entitled? Under which circumstances can the victim of the criminal offence resort to a constitutional complaint?

III. The substantive basis of constitutional complaint, i.e. what basic rights violations can be relevant in criminal cases.

The presentation addresses the basic rights the violation of which is necessary for the admissibility of a constitutional complaint. With reference to the case law of the

Constitutional Court, an overview will be given over the scope of basic rights, the violation of which proved sufficient for the annulment of criminal judgments (e.g. the nullum crimen principle, the unnecessary limitation of basic rights, the prohibition of discrimination, the right to a fair trial, the right to defence). On the other hand, provisions of the Constitution have to be mentioned, the violation of which cannot be subject to a constitutional complaint (e.g. the right to legal certainty).

Keywords: Constitutional Complaint; Constitutional Court; Criminal Law.

UDK: 340.134

*László Trócsányi**

CODIFICATION NOW AND THEN

The codification is undoubtedly amongst the most challenging legal professions. A legislation that has always required caution and in-depth knowledge in law as well as in other areas that are beyond but attached to the law such as history, economics or international studies. The process of codification is indeed hard science as the late Justice Minister of Hungary, Gábor Vladár once pointed out.

The codification reflects the need of the population of a given state to be aware of and foresee the rules and thus be able to adjust their behaviors accordingly. Since foreseeability and the capability to shape and drive people's behaviors are essential elements of the law, codification is the same age as law. Therefore, early pieces of codification, such as the Code of Hammurabi can be traced back to the antiquity. The expansion of codification began in the 19th century with the "*Code civil*" of Napoleon, when codification was coupled with the notion that the state shall be ruled under and by the law. In recent times, the high expectation of regulation has led to the burgeoning of legislation and codification in Hungary as well as around the world. In 1938, when Gábor Vladár was the Justice Minister, the Hungarian Parliament adopted 39 acts, however, this number rose to 250 in 2015. While the legislative challenges have been rapidly increasing with the globalization and the European integration, the digitization can somewhat counterbalance the novel challenges as it can serve as a helpful tool and a source of the contemporary codification. That said, the recent proliferation of codification threatens to occur at the expense of quality. It is therefore all the more important to remind ourselves of the memorable words of Gábor Vladár and also add

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that codification is not only science, but it is itself an art that requires great attention and care and comes with enormous responsibility.

The ones that are responsible for the codification have to start each day with a vision to bridge the gap between the ideal and the real as well as to find the right balance between the abstract and the concrete. These are the primary tasks that shall drive their mission. To this end, they first have to have extensive and deep knowledge over their own language as the process of codification has always been and is still deeply rooted in the national culture. They need to understand the domestic context of the regulation as well as to have a comparative overview of the relevant experiences of other countries. As the famous Hungarian poet once pointed out, they have to know what they are talking about instead of just talking about what they know. The increasing expectation of the society including citizens as well as legal persons is to have regulation that is transparent, foreseeable and straightforward. Furthermore, the courts and other authorities expect the regulation to be in compliance with the Fundamental Law as well as the international and European legal requirements. Legislation has different phases and each one is equally important in order to produce the desired outcome. To recognize and understand the problem is the essential first step which has to be followed by the analyses of the identified problem as well as the various draft legislative proposals. These are all necessary preconditions for the finalization of the text of the regulation. Last but not least, the impact assessment amounts to be a necessary last step that completes the whole codification process.

While the national codification is itself an art, the codification of the law of the European Union is rather just a "technical" process. It is the law of compromises among various nations. It requires the compilation of various national perspectives without the dogmatic background and historic context. That is rather suitable to achieve technocratic goals such as the guarantee of the four freedoms or the creation of the single market. Furthermore, it can be built upon the codification tradition of the various legal cultures of its Member States.

Keywords: Code of Hammurabi; National Codification.

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*Bojan N. Tubić**

INTERNATIONAL PEACE AND UN SECURITY COUNCIL RESOLUTIONS

The United Nations were created with the most important purpose to preserve international peace and security. One of its main organs, Security Council, was vested with powers to fulfill this function. In its history, Security Council has enacted numerous resolutions related to international peace and security. Although the United Nations, like the other international organizations adopt non-binding instruments like declarations and recommendations, only the Security Council has the power to take obligatory decisions according to the Chapter VII of the UN Charter. It deals with the action with respect to threats to the peace, breaches of the peace and acts of aggression. According to this Chapter of the Charter, the Security Council first determines the existence of any threat to the peace, breach of the peace or act of aggression and orders what measures shall be taken to maintain or restore international peace and security. Before making the recommendations or deciding upon the measures the Security Council may call upon the parties concerned to comply with provisional measures.

Security Council can decide to prescribe measures which do not involve the use of force like interruption of economic relations and means of communication and the severance of diplomatic relations. Specific measures could be, for example, establishing of international criminal tribunals, like in the cases of former Yugoslavia and Ruanda, or freezing the assets of individuals and legal persons connected with terrorist organizations. If non-armed measures would be inadequate, Security Council may take military action to maintain or restore international peace and security. It

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can establish a peace operation by adopting a resolution which regulates mandate and all details related to a certain peace operation. According to the Article 25 of the Charter, all UN Member States agree to accept and carry out the decisions of the Security Council.

The Security Council is an organ conceived originally on a basis of responsibility and capacity with five permanent members, the victors of the Second World War. Since that period the world has changed and Security Council has been less and less responsive in crisis. There are strong initiatives for reform in a way to have more permanent members of this body, according to the new reality in international relations. Moreover, the veto by a permanent member of the Security Council can prevent adoption of certain instruments regarding peace and security. The question is whether Chapter VII is an efficient mean to establish or restore international peace or the Charter should be amended?

However, without the Security Council as it is, the world would return to the period when war was a legitimate mean of dispute settlement. Reforms are needed, but Security Council has achieved one of its main goals that is to prevent global military conflict and also restored international peace in certain situations by adopting resolutions as legal binding instruments. The problem is not in respecting Security Council resolutions. Once they are adopted they cause legal effect. The main problem is that we do not have resolutions in every crisis in the world. When there is no consensus among the permanent members of Security Council regarding certain measure or intervention, the resolution will not be adopted and in most situations it will not even be drafted and presented to the Security Council.

Keywords: Security Council; Resolutions; United Nations; International Peace.

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*Katalin Visontai-Szabó**

SHARENTING: THE CHILD'S RIGHTS TO PRIVACY AND THE PARENT'S WISH TO SHARE

Nowadays in the world of digitization, it is no longer surprising at all that parents record and often post on social media platforms every step and action of their growing child. 92% of children already have a digital footprint by the age of 2, and 37% before they are born. Data published by parents without the consent of the child is in many cases sensitive data. Parents' wish – and sometimes urgent need – to share is completely understandable, as they want to share with the world their pride, doubts, parenting difficulties, family issues, or they just want to get answers to their questions, but their behavior raises a number of questions. Can a parent disclose sensitive information about their child without their consent? When can we say that a parent shares too many pictures of their child? Why do parents feel it is important to post? Is the child of a famous person considered a celebrity too? Does a parent have the right to make money using their child? What will the child say about this when they grow up? What effects can this have on a child's life now and later in an adult's life? What is sharenting? Basically it is a word formation of two words share and parenting. In case of sharenting two fundamental rights conflict: the parent's freedom of speech and the child's right to privacy.

Sharenting can cause a lot of dangers that I will try to explain in detail in my presentation, in this abstract I will only write about the topic briefly. The child's digital footprint and virtual identity are created and shaped against their will. This deprives the child of having no digital footprint at all if he or she wants to do so later because the internet doesn't forget. A parent violates a child's right to a good reputation and privacy, especially if he or she employs

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public shaming punishment, which can even lead to suicide. This behavior also destroys the trust between the parent and the child and can also cause serious damage to the child's personality development. Images of a child can fall into the hands of pedophile criminals and be used for child pornography. Data shared about a child may also be suitable for identity theft, and the child's personal information may fall into the hands of phishers and cybercriminals. In addition, a child may be a victim of bullying or cyberbullying because of content shared by their parents. Unfortunately, the GDPR does not intentionally address these issues, as the processing of personal data by a natural person solely in the context of a personal or domestic activity is not covered by the GDPR, although children's rights also deserve special protection under the GDPR. In my presentation, I will also try to give some advice to the legislator and parents on how to avoid violating children's rights.

In recent decades, children's rights and their role have become paramount. Today, children appear as independent individuals, but in the past, children only appeared as part of the family. The rights of the children were recognized, so in order to protect these rights, it was necessary to enshrine them in legislation and international documents. The most important is the United Nations Convention the Rights of the Child (UNCRC).

Keywords: Children's Rights; Social Media; Parental Responsibility; Digital Footprint; Sharenting.

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*Helmut Weber**

THE INTERRELATIONSHIP BETWEEN CULTURE, LAW AND PEACE: CONNECTIONS AND FRICTIONS

'Culture' can be understood in different ways: as referring to the arts, or to an advanced stage of human societies, or to the totality of human achievements or in yet another way. In juxtaposition to 'law' and 'legal norms', in this paper 'cultural norms' shall be taken as the sum of all extra-legal norms: rules derived from morals, believes, customs, traditions; social norms.

Conflicts arise when legal and cultural norms differ. In dynamic times this comes about when the (conservative) law lags behind (progressive) cultural changes in society, or when (progressive) law makers legislate to alter the (conservative) cultural status quo in society. (The words 'progressive' and 'conservative' are used here not in regard to any specific policies or aims, but in their literal sense of 'moving on' and 'safeguarding'.)

Four examples from Germany from the legal and social development of the last hundred and fifty years show different types of dealing (or not dealing) with actual or potential discrepancies between legal and cultural norms:

- Renting a room or an apartment to an unmarried couple ('Kuppelei', 'Sittenwidrigkeit'): the law gets adjusted to changes in society

- Fire Service Levy ('Feuerwehrabgabe'): the law gets adjusted to changes in society only after an external impulse

- Mandatory wearing of seatbelts while driving a car ('Anschnallpflicht'): cultural norms adjust to changes in the law.

- General maximum speed limit on motorways ('Autobahn-Tempolimit'): *lex imperfecta* and slow cultural change.

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Presumed positive or negative effects on 'culture' can be arguments for or against legal changes; as a high prestige reference point, 'culture' is a strong und often used argument by, as the case may be, supporters or opponents of change.

Linking, in an additional step, 'culture' to the increasingly prominent notion of 'identity' ('cultural identity'), often as 'national identity' or a particular group identity, tends to even further strengthen the position of those arguing on this basis. This can lead to an asymmetrical discussion in which counter-arguments are rejected from the outset as inadmissible, because *eo ipso* perceived as hostile and directed against a defining 'self'. In this way, the 'culture'-based position gets virtually immunised against counter-arguments.

Important as 'culture'-based arguments are, they should be open to scrutiny like all other arguments, not be used to shut down or prevent a debate. They could, on the contrary, be starting points for open and broad factual debates which might lead to consensual or, for the other side, at least tolerable solutions, to an acceptable modus vivendi, and thus, to that extent, to social peace.

Keywords: Legal Norms and Cultural Norms; Conservative and Progressive Approaches; *Lex Imperfecta*; Cultural Identity.

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